

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1974 of 2016

1.Kavitha
2.Minor.I.Prabakaran
3.Minor.I.Sanjai ... Appellants/Claimants
(Minor appellants 2 & 3 are represented
by their mother & natural guardian,
Kavitha, 1st appellant herein)

Vs.

1.A.Karuppusamy
2.The National Insurance Company Limited,
1st Floor, Karthikaya Complex,
No.403, B-10, Mettur Main Road,
Bhavani - 638 302.
3.Gnanamani ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.12.2014 made in M.C.O.P.No.79 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Perundurai.

For Appellants : Mr.P.Parthi Kannan
for Mr.K.Kaithamalaikumaran
For R1 : No appearance
For R2 : Mr.R.Sunilkumar
R3

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 16.12.2014 made in M.C.O.P.No.79 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Perundurai.

2.The appellants are the claimants in M.C.O.P.No.79 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Perundurai. They filed the above said claim petition, claiming a

sum of Rs.20,00,000/- as compensation for the death of one Ilango, who died in the accident that took place on 27.11.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Minidor Auto belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the Minidor Auto to pay a sum of Rs.8,33,000/- as compensation to the appellants at the first instance and then recover the same from the 1st respondent-owner of the Minidor Auto on the ground that the driver of the Minidor Auto was not possessing valid driving license at the time of accident.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the deceased was working as an Accountant and Goods Delivery incharge in Arthana Tex, Perundurai and was earning a sum of Rs.15,000/- per month. But, the Tribunal fixed a meagre sum of Rs.5,000/- per month as notional income of the deceased. The Tribunal ought to have fixed a sum of Rs.15,000/- per month as notional income of the deceased. The Tribunal erred in deducting 1/3rd towards personal expenses of the deceased, whereas the 3rd respondent is the mother of the deceased and she is also depending on the income of the deceased. The amounts awarded by the Tribunal towards loss of love and affection, funeral expenses and loss of consortium are meagre. The Tribunal has not awarded any amounts towards transportation and loss of estate and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal ought to have exonerated the 2nd respondent-Insurance Company from its liability and directed the 1st respondent-owner of the Minidor Auto to pay the compensation to the appellants, as the driver of the Minidor Auto belonging to the 1st respondent was not possessing valid driving license at the time of accident. The appellants have not produced any material evidence to prove that the deceased was earning a sum of Rs.15,000/- per month. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.5,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

8.From the award passed by the Tribunal, it is seen that the Tribunal has held that the deceased travelled in the Minidor Auto as loadman at the time of accident and awarded compensation to the appellants. The Tribunal erred in ordering pay and recovery on the ground that the driver of the Minidor Auto belonging to the 1st respondent did not possess valid driving license at the time of accident. It is not the case of the 2nd respondent-Insurance Company that the driver of the 1st respondent's Minidor Auto did not possess Driving License to drive the Minidor Auto. As per the judgment of the Hon'ble Apex Court reported in (2017) 14 Supreme Court Cases 663 [Mukund Dewangan Vs. Oriental Insurance Company Ltd.,], wherein it has been held that a person possessing a valid driving license to drive particular class of vehicle can drive all the category of vehicle in the said class without obtaining any badge or endorsement. In view of the judgment of the Hon'ble Apex Court, there is no necessity to obtain badge. Therefore, the award of the Tribunal directing the 2nd respondent-Insurance Company to pay the compensation to the appellants and then recover the same from the 1st respondent-owner of the Minidor Auto is set aside. The 2nd respondent-Insurance Company is liable to pay the compensation to the appellants.

9.As far as quantum of compensation is concerned, it is the contention of the appellants that the deceased was working as an Accountant and Goods Delivery incharge in Arthana Tex, Perundurai and was earning a sum of Rs.15,000/- per month. They failed to prove the said contention. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the deceased. The accident occurred in the year 2011 and the notional income fixed by the Tribunal is meagre. Therefore, considering the year of accident, a sum of Rs.7,500/- per month is fixed as notional income of the deceased. The deceased was aged 42 years and the Tribunal erroneously granted 30% enhancement towards future prospects. The appellants are entitled to only 25% enhancement towards future prospects. The Tribunal rightly applied multiplier '14' and deducted 1/3rd towards personal expenses. In view of the above, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.10,50,000/- {Rs.9,375/- [Rs.7,500/- + Rs.1,875/- (25% of Rs.7,500/-)] X 12 X 14 X 2/3}. The Tribunal has awarded meagre sum of Rs.25,000/- towards loss of consortium to the 1st appellant and Rs.5,000/- towards funeral expenses and the same are enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal erred in awarding a sum of Rs.25,000/- to the 1st appellant towards loss of love and affection in addition to loss of consortium. The 1st appellant, who is the wife of the deceased is entitled to compensation only

for loss of consortium. Therefore, a sum of Rs.25,000/- awarded by the Tribunal towards loss of love and affection to the 1st appellant is set aside. The amounts awarded by the Tribunal towards loss of love and affection to the appellants 2 and 3 is just and reasonable and hence, the same is confirmed. The Tribunal has not awarded any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimant. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	7,28,000/-	10,50,000/-	Enhanced
2.	Loss of love and affection to the 1 st appellant	25,000/-	-	Set aside
3.	Loss of love and affection to appellants 2 and 3	50,000/-	50,000/-	Confirmed
4.	Funeral expenses	5,000/-	15,000/-	Enhanced
5.	Loss of consortium to the 1 st appellant	25,000/-	40,000/-	Enhanced
6.	Loss of estate	-	15,000/-	Granted
	Total	Rs.8,33,000/-	Rs.11,70,000/-	enhanced by Rs.3,37,000/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.8,33,000/- is hereby enhanced to Rs.11,70,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.79 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Perundurai. On such deposit, the 1st appellant and the 3rd respondent are permitted to withdraw their

respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 and 3 attain majority. On such deposit, the first appellant being the mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants 2 and 3. No costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Perundurai.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to Mr.S.Kaithamalaikumaran, Advocate,sr.7112.

Ln(co)
krd 4/1

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