

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3113 of 2013

1.Suseela

2.Minor Anandhi

3.Minor Suganthi
(2 & 3 minors rep. by their mother
and next friend Suseela)

4.Chinnaya Gounder (Died)

5.Ellammal (Died) ... Appellants/Claimants

(Cause title accepted vide order of
court dated 10.10.2012 made in
M.P.No.2 of 2012 in C.M.A.Sr.No.29237
of 2011)

Vs.

1.S.Ramasamy
(R1 remained exparte before Tribunal)

2.National Insurance Company Limited,
No.66, Greams Road,
Egmore, Chennai - 600 008. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.03.2006 made in M.C.O.P.No.1277 of 1999 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellants : Mr.F.Terry Chellaraja for
Ms.M.Malar

For R2 : Mr.M.Krishnamoorthy
R1 - Ex.parte

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 06.03.2006 made in M.C.O.P.No.1277 of 1999 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.1277 of 1999 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.7,50,000/- as compensation for the death of one Kuppusamy, who died in the accident that took place on 21.03.1998.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being the insurer of the said lorry to pay a sum of Rs.4,58,000/- as compensation to the appellants.

4.Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation. After passing award, the claimants 4 & 5 died.

5.The learned counsel appearing for the appellants contended that the deceased was working as a mason and was earning a sum of Rs.200/- per day at the time of the accident but the Tribunal fixed a meagre sum of Rs.3,000/- per month as notional income of the deceased. The deceased was 30 years at the time of accident. The Tribunal erroneously fixed the age of the deceased as 34 years and applied wrong multiplier. There were 5 dependants on the date of passing award. The Tribunal erred in deducting $1/3^{\text{rd}}$ instead of $1/4^{\text{th}}$ towards personal expenses of the deceased. The Tribunal has not awarded any amount towards loss of love & affection and loss of estate. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not filed any document to prove the avocation and income of the deceased. In the absence of any material evidence, the Tribunal has fixed Rs.3,000/- per month as notional income of the deceased which is not meagre. The appellants have not made out any case for enhancement of compensation 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 all the materials available on record.

8. It is the contention of the appellants that the deceased was working as a mason and was earning a sum of Rs.200/- per day at the time of the accident. The appellants have not filed any document to substantiate the said contention. In the absence of any material evidence, the Tribunal fixed notional income of the deceased at Rs.3,000/- per month. The accident is of the year 1998 and the notional income fixed by the Tribunal is not meagre. The Tribunal deducted 1/3rd towards personal expenses of the deceased and erred in awarding a sum of Rs.12,000/- towards loss of income, which is not proper. Hence, the amount awarded by the Tribunal towards loss of income is set aside. The Tribunal fixed the age of the deceased as 34 years at the time of accident. The Tribunal has not awarded any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. There were 5 dependants on the deceased. After passing award the claimants 4 & 5 died. The Tribunal deducted 1/3rd towards personal expenses of the deceased. The same is not correct. By deducting 1/4th towards the personal expenses of the deceased and by applying the multiplier '16', the amount awarded by the Tribunal towards loss of income is modified to Rs.6,04,800/- (Rs.3,000/- + 1,200 (Rs.3,000/- x 40%) 12 x 16 x 3/4). The Tribunal has awarded a sum of Rs.35,000/- altogether towards loss of consortium and funeral expenses, which is meagre. Hence, a sum of Rs.40,000/- is awarded towards loss of consortium to the 1st appellant and Rs.15,000/- is awarded towards funeral expenses. The appellants are not entitled to any compensation towards extra nourishment, loss of income during treatment and pain & sufferings. Hence, the amounts awarded by the Tribunal towards loss of income during treatment, extra nourishment and pain and sufferings are liable to be set aside and hence, the same are hereby set aside. The Tribunal has not awarded any amount towards loss of love and affection and loss of estate. Hence, a sum of Rs.40,000/- is granted towards loss of love and affection and Rs.15,000/- is granted towards loss of estate. The amount awarded by the Tribunal towards transport expenses is just and reasonable and hence the same is hereby confirmed.

9. It is made clear that the appellants/claimants shall not be entitled for any interest for the delay period on the enhanced amount of Rs.2,57,800/- as per the order of this Court dated 24.07.2013 made in M.P.No.3 of 2012 in C.M.A.SR.No.29237 of 2011. 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 income during treatment for 4 months	12,000	-	Set aside
2.	Loss of consortium and Funeral expenses	35,000	40,000	Enhanced
			15,000	
3.	Pain and sufferings	9,000	-	Set aside
4.	Loss of love and affection	-	40,000	Granted
5.	Transport expenses	1,000	1,000	Confirmed
6.	Extra nourishment	1,000	-	Set aside
7.	Loss of earning	4,00,000	6,04,800	Enhanced
8.	Loss of estate	-	15,000	Granted
	Total	Rs.4,58,000/-	Rs.7,15,800/-	Enhanced by
		-	-	Rs.2,57,800/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,58,000/- is hereby enhanced to Rs.7,15,800/- 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 necessary Court fee, if any, on the enhanced compensation. Pending appeal, appellants 4 & 5 died. Hence, out of the enhanced award amount, 1st appellant is entitled to a sum of Rs.2,15,800/- and the appellants 2 & 3 are each entitled to a sum of Rs.2,50,000/-. 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. On such deposit, the 1st appellant is permitted to withdraw her respective share of the enhanced award amount along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. The share of the minor appellants 2 & 3 are directed to be deposited in any one of the Nationalised Bank till they attain majority. The 1st appellant being the mother of the appellants 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To
1.The V Judge,
Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.

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

+1 cc to M/s.M.Malar , Advocate Sr.No. 22939

+1 cc to M/s.m.Krishnamoorthy, Advocate Sr.No. 22440

VBA (CO)
RMP (25/01/2021)

C.M.A.No.3113 of 2013

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