

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2047 of 2016

1.S.Shanthi

2.S.Rajesh

3.Subramaniam ... Appellants/Petitioner

Vs.

1.G.Vinay Kumar Reddy
(R1 exparte before the Tribunal)

2.Bajaj Allianz General Insurance Company Ltd.,
No.25/26, Prince Towers, Ground Floor,
College Road, Nungambakkam,
Chennai - 06. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.07.2015 made in M.C.O.P.No.2261 of 2010 on the file of Motor Accidents Claims Tribunal, II Special Sub Court, Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For R2 : Mr.K.Poomalai

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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 07.07.2015 made in M.C.O.P.No.2261 of 2010 on the file of Motor Accidents Claims Tribunal, II Special Sub Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.2261 of 2010 on the file of Motor Accidents Claims Tribunal, II Special Sub Court, Chennai. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Karthik, who died in the accident that took place on 07.06.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.9,27,000/- as compensation to the appellants 1 & 3 and dismissed the claim petition as against the 2nd appellant, brother of the deceased.

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

5.The learned counsel appearing for the appellants/claimants contended that the deceased was aged 22 years at the time of accident and was earning a sum of Rs.350/- per day by working as plumber. The Tribunal without considering the same, fixed only a meagre sum of Rs.6,500/- per month as notional income of the deceased. There are three dependents of the deceased and the Tribunal ought to have deducted 1/3rd instead of 1/2 towards personal expenses. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not produced any document to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.6,500/- per month as notional income of the deceased, which is not meagre. The Tribunal after considering all the materials available on record in proper perspective, has

awarded just compensation. 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 aged 22 years at the time of accident and was earning a sum of Rs.350/- per day by working as plumber. The appellants have 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.6,500/- per month as notional income of the deceased. The accident is of the year 2010 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.8,000/- per month is fixed as notional income of the deceased. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The deceased Karthik was a bachelor at the time of accident and therefore, 50% deducted by the Tribunal towards personal expenses is proper. By applying multiplier '18', the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.12,09,600/- (Rs.8,000/- + 3200 [Rs.8,000/- x 40%] x 12 x 18 x 50%). A sum of Rs.2,00,000/- awarded by the Tribunal towards loss of love and affection to the appellants 1 & 3 is excessive and the same is hereby reduced to Rs.80,000/-. A sum of Rs.25,000/- awarded by the Tribunal towards funeral expenses is excessive and the same is hereby reduced to Rs.15,000/-. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate.

9. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimants. 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 or reduced
1.	Loss of dependency	7,02,000	12,09,600	Enhanced
2.	Loss of love and affection	2,00,000	80,000	Reduced
3.	Funeral and Ritual expenses	25,000	15,000	Reduced
4.	Loss of estate	-	15,000	Granted
	Total	Rs.9,27,000/-	Rs.13,19,600/-	Enhanced by Rs.3,92,600/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.9,27,000/- is hereby enhanced to Rs.13,19,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants 1 & 3/claimants 1 & 3 are directed to pay necessary Court fee, if any, on the enhanced compensation. 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 appellants 1 & 3 are permitted to withdraw their respective share from the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. This appeal is dismissed as against the 2nd appellant. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The II Special Subordinate Judge, Chennai.
The Motor Accident Claims Tribunal
Chennai.

2.The Section Officer
V.R.Section
High Court, Chennai.

+2 ccs to Mr.V.Mohan Choudary Advocate sr1811
+1 cc to M/s.K.Poomalai Advocate sr 1752

C.M.A.No.2047 of 2016

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