



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2379 of 2014

and

M.P.No.1 of 2014

M/s.HDFC General Insurance
Company Limited
Rep. by its Duly constituted Attorney
VI floor, Leela business park
Anderi-Kurla road, Anderi East
Mumbai-400 059.

.. Appellant/2nd Respondent

Vs.

1.Balraman
2.Shanthi
3.Balachandar
4.Priya

5.Baskar

.. Respondents/Petitioners/
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 28.06.2012 made in M.C.O.P.No.912 of 2008 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai.

For Appellant : Mr.J.Michael Visuvasam

For R1 to R4 : Mr.K.Varadha Kamaraj
for Mr.Jawahar

For R5 : Exparte



J U D G M E N T

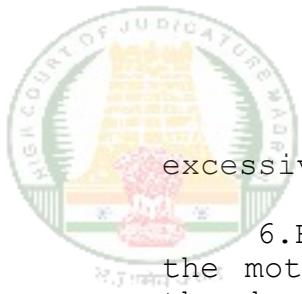
Civil Miscellaneous Appeal is filed by the Insurance Company challenging the award dated 28.06.2012 made in M.C.O.P.No.912 of 2008 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai.

2.The respondents 1 to 4 filed the claim petition in M.C.O.P.No.912 of 2008 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai, claiming a sum of Rs.61,00,000/- as compensation for the death of one Lakshmi Narayanan, who died in the accident that took place on 14.07.2008.

3.According to the respondents 1 to 4, on the date of accident, i.e., on 14.07.2008 at about 14.00 hours, while one Vignesh Kannan was riding in his motorcycle along with the deceased Lakshmi Narayanan as a pillion rider near Sathiyamangalam village in Tiruvannamalai to Gingee road, a car belonging to the 5th respondent driven by its driver in a rash and negligent manner, dashed against the motorcycle and caused the accident. Due to the accident, the deceased fell down on the road and both the deceased and the rider of the motorcycle succumbed to their injuries. Therefore, the respondents 1 to 4 filed the above claim petition claiming compensation against the 5th respondent and the appellant/Insurance Company.

4.The 5th respondent, owner of the car, remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the car involved in the accident was not insured with the appellant. The respondents 1 to 4 have to prove that the driver of the car possessed valid driving license at the time of accident. The respondents 1 to 4 have not mentioned the name of the hospital, in which the deceased has taken treatment as in-patient. The respondents 1 to 4 have not made the owner and insurer of the motorcycle as parties. Therefore, the claim petition is bad for non-joinder of necessary parties. The appellant/Insurance Company has appointed an independent investigator to enquire the accident. The investigator in his report has stated that the motorcycle driven by the deceased did not carry any registration number and it was newly purchased. The driver of the car belonging to the 5th respondent has consumed alcohol at the time of accident and in the charge sheet also, it has been mentioned. The appellant/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the claimants is



excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, one Nagarajan, father of the rider of the motorcycle was examined as P.W.1, 1st respondent, father of the deceased, examined himself as P.W.2, one Parthasarathy, co-student of the deceased, was examined as P.W.3 and one Jayaraj, eye-witness to the accident, was examined as P.W.4 and marked 23 documents as Exs.P1 to P23. On the side of the appellant, one Sundaramurthy was examined as R.W.1, one Murugan, author of F.I.R., was examined as R.W.2, one Lakshmi, Constable, was examined as R.W.3, one Jayaraj, was examined as R.W.4 and marked six documents as Exs.R1 to R6.

7. 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 car belonging to the 5th respondent and directed both the 5th respondent as well as the appellant/Insurance Company being insurer of the said car to jointly and severally pay a sum of Rs.12,39,000/- as compensation to the claimants.

8. Against the said award dated 28.06.2012 made in M.C.O.P.No.912 of 2008, the appellant/Insurance Company has come out with the present appeal challenging the quantum of compensation awarded by the Tribunal.

9. The learned counsel appearing for the appellant/Insurance Company contended that in the absence of any material evidence to prove the income of the deceased by earning through self-employment, the Tribunal erred in fixing a sum of Rs.12,000/- per month as notional income of the deceased. The deceased was a bachelor and the Tribunal ought to have deducted 1/2 instead of 1/3rd towards personal expenses. The respondents 3 and 4, who are elder brother and sister of the deceased are not dependants of the deceased. The Tribunal failed to see that the age of the respondents 1 & 2 is 56 and 46 years respectively and erred in fixing the age as 50 years by taking average for applying multiplier. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10. The learned counsel appearing for the respondents 1 to 4 contended that the deceased had completed B.E. degree and was earning a sum of Rs.20,000/- per month by doing real estate & share market business. The Tribunal without considering the same, fixed only a meagre sum of Rs.12,000/- per month as notional income of the deceased. The Tribunal ought to have applied multiplier '18' based on the age of the deceased. The Tribunal has not granted any enhancement towards future prospects and awarded any compensation towards loss of estate.

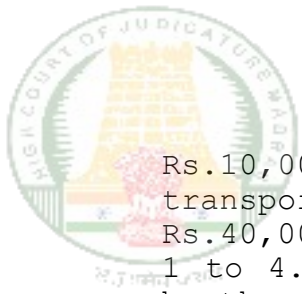


The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the respondents 1 to 4 and perused the entire materials available on record.

12. It is the contention of the respondents 1 to 4 that the deceased was a B.E. graduate and was earning a sum of Rs.20,000/- per month by doing real estate business in the name of N.K.B. Land Promoters & share market business at the time of accident. They have marked the appointment order from Padaleeswarar Polytechnic College, Cuddalore, as Ex.P16 to prove that the deceased was also selected for the job. It is the further contention of the respondents 1 to 4 that if the deceased is alive, he would have got decent job with good salary. The Tribunal considering the fact that the deceased was a B.E. graduate from a reputed institution, fixed a sum of Rs.12,000/- per month as notional income of the deceased, which is meagre.

13. From the materials available on record, it is seen that the respondents 1 & 2 have lost their son at his young age. Therefore, the respondents 1 to 4 are entitled to more compensation than the amount awarded by the Tribunal even though they have not filed any appeal or cross-appeal. In view of the same, this Court is of the view that this is a fit case to invoke Order 41 Rule 33 of C.P.C., to enhance the compensation awarded by the Tribunal. Considering the educational qualification of the deceased and the year of accident, i.e., 2008, a sum of Rs.13,000/- per month is fixed as notional income of the deceased. As per Ex.P9/post-mortem certificate, the deceased was aged 22 years at the time of accident. The Tribunal erred in applying multiplier '11' based on the age of the parents of the deceased. As per the judgment of the Hon'ble Apex Court, age of the deceased has to be taken into account for applying multiplier. The correct multiplier applicable is '18' as the deceased was aged 22 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The respondents 1 to 4 are entitled to 40% enhancement towards future prospects. The deceased was a bachelor at the time of accident and the Tribunal ought to have deducted $\frac{1}{2}$ instead of $\frac{1}{3^{\text{rd}}}$ towards personal expenses. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.19,65,600/- (Rs.13,000/- + 5200 [Rs.13,000/- X 40%] X 12 X 18 X $\frac{1}{2}$). The Tribunal awarded a sum of Rs.10,000/- altogether towards funeral expenses & transportation, which is meagre. Hence, a sum of Rs.15,000/- and



Rs.10,000/- are awarded separately towards funeral expenses and transportation respectively. The Tribunal has awarded a sum of Rs.40,000/- towards loss of love & affection to the respondents 1 to 4. Considering that the respondents 3 and 4 are the elder brother & sister of the deceased respectively, a sum of Rs.40,000/- each is awarded towards loss of love & affection to the respondents 1 & 2, who are parents of the deceased. 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. The compensation awarded by the Tribunal towards damage to clothes is just and reasonable and hence, the same is hereby confirmed. 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	11,88,000	19,65,600	Enhanced
2.	Loss of love and affection to the respondents 1 & 2	40,000	80,000	Enhanced
3.	Funeral expenses and transportation	10,000	15,000 10,000	Granted
4.	Damage to clothes	1,000	1,000	Confirmed
5.	Loss of estate	-	15,000	Granted
	Total	12,39,000	20,86,600	Enhanced by Rs.8,47,600/-

14. In the result, the Civil Miscellaneous Appeal is dismissed. The compensation of Rs.12,39,000/- awarded by the Tribunal is hereby enhanced to Rs.20,86,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 to 4 are directed to pay necessary Court fee, if any, on the enhanced compensation. Both the 1st respondent and the 2nd respondent/Insurance Company



are directed to jointly and severally 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 respondents 1 to 4 are permitted to withdraw their respective share of the award amount as per the apportionment made by the Tribunal, along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj

To

1.The District Judge
The Motor Accidents Claims Tribunal
Tiruvannamalai.

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

+lcc to Mr.J.Michael Visuvasam, Advocate, S.R.No.23720
+lcc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.23629
+lcc to Mr.B.Jawahar, Advocate, S.R.No.23783

C.M.A.No.2379 of 2014
and M.P.No.1 of 2014

PA (CO)
SB(28/07/2021)