

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3037 of 2014

1.A.K.Kabira Begum
2.Sithika (Minor)
3.Zeenath Bivi
4.Mohamed Yusuf
5.S.A.K.Yusuf Sahith (Minor)
(Minor appellants 2 & 5 rep. by their
next friend and mother/1st appellant) ...Appellants /Petitioners

Vs.

1.Javith Baig
2.Royal Sundaram Alliance Insurance Co. Ltd.
No.6, 1st floor, LB road
Chennai-20. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.02.2014 made in M.C.O.P.No.2026 of 2010 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Mr.K.Varadhakamaraj

For R2 : Mr.K.Vinod for
Mrs.Elveera Ravindran

R1 : Exparte

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 10.02.2014 made in M.C.O.P.No.2026 of 2010 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.2026 of 2010 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. They filed the said claim petition claiming a

sum of Rs.20,00,000/- as compensation for the death of one Abdul Khadar, who died in the accident that took place on 16.03.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the lorry and directed both the 1st respondent as well as 2nd respondent/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.9,70,050/- as compensation to the appellants.

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 contended that at the time of accident, the deceased was earning a sum of Rs.20,000/- per month by running cell phone shop in Chennai under the name and style of 'Bismi Communications'. The appellants have marked the PAN card of the deceased and copy of rental agreement as Exs.P7 and P8 respectively, to substantiate their contention. The Tribunal without considering the same, fixed only a meagre sum of Rs.4,500/- per month as notional income of the deceased. The deceased was aged 29 years at the time of accident and the Tribunal ought to have granted 50% instead of 30% 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 valid document to prove that the deceased was earning a sum of Rs.20,000/- per month at the time of accident. In the absence of any material evidence to prove the income of the deceased, the Tribunal rightly fixed a sum of Rs.4,500/- per month as notional income of the deceased. The Tribunal after considering all the materials available on record, awarded compensation, 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 2nd respondent/Insurance Company and perused the entire materials available on record.

8.It is the contention of the appellants that at the time of accident, the deceased was earning a sum of Rs.20,000/- per month by running cell phone shop in Chennai under the name and style of 'Bismi Communications'. To substantiate the said contention, the appellants have marked the PAN card of the

deceased and copy of rental agreement as Exs.P7 and P8 respectively. The Tribunal rejecting Exs.P7 and P8 on the ground that the author of the rental agreement was not examined, fixed a sum of Rs.4,500/- 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. Hence, a sum of Rs.7,500/- per month is fixed as notional income of the deceased. As per Ex.P6/driving license of the deceased, he was aged 29 years at the time of accident. The appellants are entitled to 40% enhancement instead of 30% enhancement towards future prospects. After applying multiplier '17' and deducting 1/4th towards personal expenses, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.16,06,500/- (Rs.7,500/- + 3000 [Rs.7,500/- X 40%] X 12 X 17 X 3/4). The amounts awarded by the Tribunal towards loss of consortium to the 1st appellant, loss of love & affection to the appellants 2 to 5, loss of estate and funeral expenses are meagre and hence, the same are hereby enhanced to Rs.40,000/-, Rs.40,000/- each to the appellants 2 & 5, Rs.20,000/- each to the appellants 3 & 4, Rs.15,000/- and Rs.15,000/- respectively. Rs.5,000/- awarded by the Tribunal towards transportation is just and reasonable and hence, the same is hereby confirmed.

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	8,95,050	16,06,500	Enhanced
2.	Loss of consortium to the 1 st appellant	25,000	40,000	Enhanced
3.	Loss of love and affection to the appellants 2 to 5	25,000	Appellants 2 & 5 80,000 Appellants 3 & 4 40,000	Enhanced
4.	Loss of estate	10,000	15,000	Enhanced

5.	Funeral expenses	10,000	15,000	Enhanced
6.	Transportation	5,000	5,000	Confirmed
	Total	9,70,050	18,01,500/-	Enhanced by Rs.8,31,450/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.9,70,050/- is hereby enhanced to Rs.18,01,500/- 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. Both the respondents are directed to jointly and severally deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount if any, already deposited by them, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1, 3 and 4 are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minors/appellants 2 & 5 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The mother of the minors, 1st appellant, is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

Sd/-
Assistant Registrar(CCC)
//True Copy//

Sub Assistant Registrar

kj
To

1.The Chief Judge
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

+1 cc to Mrs. Elveera Ravindran, Advocate Sr.No. 24594
+1 cc to Mr.K.Varadha Kamaraj, Advocate Sr.No. 24567

C.M.A.No.3037 of 2014

RLD(CO)
RMP(26/04/2021)