

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3224 of 2019

Ramasamy (died)

1.Sellammal

2.Preethi ... Appellants

Vs.

1.Dhandapani

2.ICICI Lombard General
Insurance Company Ltd.
S.F.No.6/5, Block No.7
Ward-C, Swarnambigai plaza
Near new bus stand
Omalur road, Fairlands, Salem
Branch office at SP towers, 1st floor
Opposite Ramesh Theatre
Trichy main road, Namakkal.

3.Shanmugam

4.United India Insurance Co. Ltd.
SRS towers, 595, Mettur main road
Bhavani-638 301.

.. Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.03.2019 made in M.C.O.P.No.702 of 2013 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants	: Mr.T.S.Arthanareeswaran for Mr.C.Paraneedharan
For R2	: Mrs.R.Sreevidhya
For R4	: Mr.J.Chandran

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 19.03.2019 made in M.C.O.P.No.702 of 2013 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellants are claimants in M.C.O.P.No.702 of 2013 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal. They filed the said claim petition along with one Ramasamy, father of the deceased claiming a sum of Rs.10,00,000/- as compensation for the death of one Yashwanth, who died in the accident that took place on 04.08.2012. Pending claim petition, the said Ramasamy died.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the drivers of the lorry as well as Toyota Qualis, belonging to the 1st respondent & 3rd respondent, fixed 20 : 80 contributory negligence on the part of the drivers of the respondents 1 & 3 respectively, awarded a sum of Rs.3,10,000/- as compensation to the appellants and directed both the 2nd respondent/ICICI Lombard General Insurance Company & 4th respondent/United India Insurance Company, being insurers of the said lorry & Qualis, to pay a sum of Rs.62,000/- & Rs.2,48,000/- i.e., 20 : 80 of the compensation to the appellants, respectively.

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 the deceased was aged 12 years at the time of accident. The notional income fixed by the Tribunal is meagre. The amounts awarded by the Tribunal under different heads are also meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 4th respondent/United India Insurance Company contended that the deceased was aged 12 years at the time of accident and he was a non-earning member. The Tribunal fixed a sum of Rs.15,000/- per annum as income for the deceased minor as per II Schedule of the Motor Vehicles Act. The Tribunal after considering all the materials available on record, 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 2nd respondent/ICICI Lombard General Insurance

Company, 4th respondent/United India Insurance Company and perused the entire materials available on record.

8.It is the contention of the appellants that the deceased was aged 12 years at the time of accident. The Tribunal fixed a sum of Rs.15,000/- per annum as income for the deceased minor, a non earning member, as per II Schedule of the Motor Vehicles Act. The Hon'ble Apex Court in the judgment reported in 2014 (1) SCC 244 (Kishan Gopal and another vs. Lala and others), held that fixing a sum of Rs.30,000/- per annum will be reasonable amount for the deceased minor. This Court has fixed notional income of the deceased minor as Rs.45,000/- to Rs.60,000/- per annum in some cases, considering the passage of time, after enactment of II Schedule of the Motor Vehicles Act. In the present case, the accident is of the year 2012 and the deceased was aged 12 years at the time of accident. In view of the above, a sum of Rs.45,000/- per annum is fixed as income of the deceased. As per the II Schedule of the Motor Vehicles Act, the multiplier applicable is '15'. The Tribunal erroneously applied multiplier '20'. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.6,75,000/- (Rs.45,000/- X 15). The Tribunal awarded a sum of Rs.10,000/- altogether towards loss of love and affection to the grand mother/1st appellant, loss of estate and funeral expenses, which is meagre and hence, the same is hereby enhanced to Rs.40,000/-.

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 income	3,00,000	6,75,000	Enhanced
2.	Loss of love and affection to the grand mother, loss of estate and funeral expenses	10,000	40,000	Enhanced

	Total	3,10,000	7,15,000	Enhanced by Rs.4,05,000/-
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10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,10,000/- is hereby enhanced to Rs.7,15,000/- 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 necessary Court fee, if any, on the enhanced compensation. Both the 2nd respondent/ICICI Lombard General Insurance Company & 4th respondent/United India Insurance Company, being insurers of the said lorry & Qualis are directed to deposit 20 : 80 of the enhanced award amount now determined by this Court i.e., Rs.1,43,000/- and Rs.5,72,000/- respectively, along with proportionate 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 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. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge
The Motor Accident Claims Tribunal
Namakkal.

2.The Section Officer

V.R.Section

High Court, Chennai.

+2ccs to Mr.C.Paraneedharan , Advocate SR.No. 17845

+1cc to M/s.R.Sreevidhya , Advocate SR.No. 18795

C.M.A.No.3224 of 2019

A.SK(07.01.2021)