

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1311 of 2017

1.R.Uma
2.R.Nandhu (minor)
3.R.Vaishnavi (minor)
4.P.Muniammal .. Appellants
(Minor appellants 2 and 3 rep. by their
mother and next friend R.Uma 1st appellant herein)

Vs.

1.V.Rajendran
2.Khaleel Ahamed N.S
3.M/s.Bharti Axa General Insurance Company Ltd.,
No.162, Metro Plaza,
2nd Floor, Anna Salai,
Chennai 600 002. .. Respondents
(Respondents 1 and 2 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.08.2016 made in M.C.O.P.No.105 of 2012 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.M.Muthukannan
For Respondents : Mr.K.Poomalai for R3

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 16.08.2016 made in M.C.O.P.No.105 of 2012 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.105 of 2012 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.45,38,850/- as compensation for the death of one Rajendran, who died in the accident that took place on 18.09.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to

rash and negligent driving by the first respondent, driver of the lorry belonging to the second respondent and directed the third respondent, as insurer of the vehicle to pay a sum of Rs.15,47,000/- 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/claimants contended that the deceased was working as a Painting Contractor and was earning a sum of Rs.17,000/- per month. The Tribunal fixed only a meagre sum of Rs.6,000/- per month as notional income of the deceased and deducted 1/4th towards personal expenses. The Tribunal failed to consider the loss of future education and life of minor children in losing their father at an early age of 4 years and 1 ½ years respectively and awarded very meagre amount. The Tribunal failed to note that no contrary evidence was adduced by the respondents for not awarding the entire amount claimed by the appellants. 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 third respondent/Insurance Company contended that in the absence of any material evidence with regard to income of the deceased, except Ex.P23/salary certificate, the Tribunal fixed a sum of Rs.6,000/- per month as notional income which is not meagre. The Tribunal has awarded an excessive amount towards loss of consortium. The Tribunal after considering the materials available on record, has 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 learned counsel appearing for the third respondent/Insurance Company and perused the entire materials available on record.

8. It is the contention of the appellants that the deceased was aged 30 years at the time of accident and was earning a sum of Rs.17,000/- per month by working as a Painting Contractor. They produced Ex.P20/salary certificate to prove the said contention. But they have failed to examine the author of the document to substantiate the same. Hence, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased and the same is meagre. The accident is of the year 2010. Hence, a sum of Rs.8,000/- per month is fixed as the notional income of the deceased. The Tribunal wrongly granted 50% towards future

prospects. The appellant is entitled to only 40% enhancement towards future prospects. After deducting 1/4th towards the personal expenses of the deceased and applying the multiplier '17', the amounts awarded by the Tribunal towards loss of Pecuniary benefits is modified to Rs.17,13,600/- {[Rs.8,000/- + Rs.3,200/- (40% of Rs.8,000/-)] x 12 x 17 x 3/4}. The Tribunal has awarded excess amount of Rs.1,00,000/- towards loss of consortium to the 1st appellant and hence, the same is reduced to Rs.40,000/-. In addition to awarding loss of consortium to the 1st appellant/wife of the deceased, the Tribunal has awarded a sum of Rs.10,000/- each towards loss of love and affection to the appellants 1 to 4. The same is erroneous. A sum of Rs.10,000/- granted to the 1st appellant for loss of love and affection is set aside. The amounts awarded by the Tribunal towards loss of love and affection is modified to Rs.25,000/- each to the appellants 2 to 4. The amount awarded by the Tribunal towards funeral expenses is excessive and the same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards the loss of estate. The amount awarded by the Tribunal towards transportation 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.	Pecuniary benefits	13,77,000/-	17,13,600/-	Enhanced
2.	Loss of consortium	1,00,000/-	40,000/-	Reduced
3.	Loss of love and affection to 1 st appellant	10,000/-	-	Set aside
4.	Loss of love and affection to appellants 2 to 4	30,000/-	75,000/-	Enhanced
5.	Funeral expenses	25,000/-	15,000/-	Reduced
6.	Transport expenses	5,000/-	5,000/-	Confirmed

7.	Loss of estate	-	15,000/-	Granted
	Total	15,47,000 /-	18,63,600/-	Enhanced by Rs.3,16,600/ -

9. In the result, the appeal is partly allowed and amount awarded by the Tribunal at Rs.15,47,000/- is enhanced to Rs.18,63,600/- along with interest and costs. The third respondent is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No. 105 of 2012. On such deposit, the appellants 1 and 4 are permitted to withdraw their share of the award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. The shares of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st appellant, mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vkr
To

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

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

+2cc to Mr.Muthukannan, Advocate, S.R.No. 3725
+1cc to Mr.Poomalai, Advocate, S.R.No. 4455

C.M.A.No.1311 of 2017

MG (CO)
GN (18/12/2020)