

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1713 of 2017

1.Priya

2.Minor Paraveswaran

3.Minor Sarveswaran

4.Balan

5.Anjalai ... Appellants /Petitioners
(Minors appellants 2 & 3 are represented
by their next friend and mother 1st appellant)

Vs.

1.Sellamuthu

2.The Bajaj Allianz General Insurance Company Ltd.,
By its Manager,
D.No.11, (Office No.6-A) Public Park,
3rd Floor, Government Arts College Road,
Coimbatore - 641 018. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.06.2016 made in M.C.O.P.No.1029 of 2013 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.M.Aniruthan

For R2 : Ms.R.Sreevidhya

For R1 : No appearance

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 29.06.2016 made in M.C.O.P.No.1029 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.1029 of 2013 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal. They filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Kannan, who died in the accident that took place on 08.09.2013.

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 lorry belonging to the 1st respondent and directed the respondents 1 & 2 to jointly and severally, pay a sum of Rs.10,19,500/- as compensation to the appellants.

4.Not being satisfied with the quantum of the compensation 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 29 years at the time of accident and was earning a sum of Rs.600/- per day by working as a Painter. The Tribunal failed to consider the evidence of P.W.3/employer of the deceased and fixed only a meagre sum of Rs.6,500/- per month as notional income of the deceased. The Tribunal has not granted any enhancement towards future prospects and loss of estate. The amounts awarded by the Tribunal under different heads, are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not produced any documents 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 rightly fixed a sum of Rs.6,500/- 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, which is not excessive 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 29 years at the time of accident and was earning a sum of Rs.600/- per day by working as a Painter. To prove the income of the deceased, the appellants have examined one Abraham, employer of the deceased as P.W.3. P.W.3 has deposed that the deceased Kannan was working as Painter in his labour contract for about eight years. The Tribunal has rejected the evidence of P.W.3 on the ground that P.W.3 has not maintained any documents to prove his statement that he employed the deceased and paid Rs.600/- as daily wages to the deceased and in such circumstances, fixed a sum of Rs.6,500/- per month as notional income of the deceased. The accident is of the year 2013. The notional income fixed by the Tribunal is meagre and therefore a sum of Rs.9,000/- 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. By applying multiplier '17' and deducting 1/4th towards personal expenses of the deceased, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.19,27,800/- [(Rs.9,000/- + 3,600 (Rs.9,000/- x 40%) x 12 x 17 x 3/4)]. The amounts awarded by the Tribunal towards loss of love & affection and loss of consortium are meagre. A sum of Rs.20,000/- each is awarded towards loss of love & affection for the appellants 2 to 5 and Rs.40,000/- is awarded towards loss of consortium for the 1st appellant. The amount awarded by the Tribunal towards funeral expenses is also meagre and the same is hereby enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is awarded towards loss of estate. 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	9,94,500	19,27,800	Enhanced
2.	Loss of love and affection to the appellants 2 to 5	10,000	80,000	Enhanced

3.	Loss of consortium to the 1 st appellant	10,000	40,000	Enhanced
4.	Funeral expenses	5,000	15,000	Enhanced
5.	Loss of estate	-	15,000	Granted
	Total	Rs.10,19,500/-	Rs.20,77,800/- - Rs.10,58,300/-	Enhanced by

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,19,500/- is hereby enhanced to Rs.20,77,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. Both the 1st respondent as well as 2nd respondent/Insurance Company are jointly and severally 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, 4 & 5 are permitted to withdraw their respective share of 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 by filing necessary applications before the Tribunal. The share of the minor appellants 2 & 3 are directed to be deposited in any one of the Nationalised Bank till they attain majority. The 1st appellant being the mother of the appellants 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

सत्यमेव जयते

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

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

+1cc to Mr.M.Aniruthan, Advocate Sr.7471
+1cc to Ms.R.Sreevidhya, Advocate Sr.8218
+1cc to Mr.D.Vijayababu, Advocate Sr.8451

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rsk[co]
srg 30/07/2020



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