

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2877 & 2878 of 2017

C.M.A.No.2877 of 2017 :

1.T.Selvi
2.K.T.S.ThirukumarAppellants/Petitioners

.Vs.

1.S.Maran
2.Shriram General Insurance Co. Ltd.,
No.66, Thirumalaipillai Road,
T.Nagar, Chennai-600 017
...Respondents/Respondents

C.M.A.No.2878 of 2017 :

1.Kalpana Devi.B
2.Kumar Gurdeep (Minor)
(represented by his mother 1st appellant)
3.P.Natesan
4.Balasundariammal ...Appellants/Petitioners

Vs.

1.S.Maran
2.Shriram General Insurance Co. Ltd.
No.66, Thirumalaipillai Road,
T.Nagar, Chennai-600 017 ...Respondents/Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.03.2015 made in M.C.O.P.Nos.2413 & 2456 of 2011 on the file of Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

In both C.M.As :

For Appellants : M/s.Saleem Fathima

For R2 : M/s.S.Dhakshnamoorthy

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed for enhancement of compensation granted by the Tribunal in the award dated 26.03.2015 made in M.C.O.P.Nos.2413 & 2456 of 2011 on the file of Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

2. Both the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

3. The appellants are the claimants in M.C.O.P.Nos.2413 & 2456 of 2011 on the file of Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai. The claimants in both the appeals filed the claim petitions claiming a sum of Rs.6,00,000/- & Rs.30,00,000/- as compensation for the death of Abishek and Balaramesh respectively who died in the accident that took place on 30.04.2011.

4. According to the claimants, on 30.04.2011 at about 15.35 hours while the deceased N.Balaramesh was proceeding in a motorcyle bearing Registration No.TN-04-X-6383 along with master Abishek as pillion rider, at P.H.Road in front of Lancen Toyota Car company, a Mini Lorry bearing Registration No.KA-51-1390 came in a rash and negligent manner behind the motorcycle and dashed against the motorcycle. In the said impact, both the rider as well as pillion rider were thrown out and sustained grievous injuries and died on the spot. Therefore, the claimants have filed the claim petitions claiming compensation against the first respondent as the owner and the second respondent as insurer of the lorry.

5. 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 mini lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said mini lorry to pay a sum of Rs.3,40,000/- & Rs.10,04,000/- respectively as compensation to the claimants/appellants in both the appeals.

6. Not being satisfied with the quantum of the compensation awarded by the Tribunal, the appellants have come out with the present appeals seeking enhancement of compensation.

7. The learned counsel for the appellants contended that in both cases, Tribunal has fixed only a meagre amount of Rs.15,000/- as annual income of the minor deceased Abhishek and Rs.6,000/- p.m. as notional income of the deceased Balaramesh respectively. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

8. Per contra, the learned counsel for the second respondent/insurance company contended that the Tribunal, after considering all the materials available on record in proper perspective, awarded a just compensation. The appellants have not made any case for enhancement of compensation and prayed for dismissal of the appeals.

9. Heard the learned counsel appearing for the appellants as well as the 2nd respondent/Insurance Company and perused the entire materials available on record.

10. As far as C.M.A.No.2877 of 2017 is concerned, it is the contention of appellants that based on Ex.P2 and EX.P3, the postmortem certificate and death certificate, the age of the deceased T.Abishek was taken as 10 years. As per Ex.P.4 is the legal heirs certificate of the deceased. The deceased Abhishek was studying 5th standard at the time of accident. The deceased was aged about 10 years at the time of accident and he is a non-earning member. Based on Second Schedule of the Motor Vehicles Act, the Tribunal has adopted multiplier 15 and fixed a sum of Rs.15,000/- per annum as notional income of the deceased. The notional income fixed by the Tribunal is meagre. He will earn atleast a nominal sum as monthly income. Hence, fixing a sum of Rs.45,000/- per annum as notional income of deceased would be reasonable. Accordingly, the amount awarded by the Tribunal towards pecuniary loss is enhanced to Rs.6,75,000/- (45,000 x 15). The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection which is excessive and the same is reduced to Rs.80,000/-. The Tribunal has not awarded any amount towards loss of estate. Hence a sum of Rs.15,000/- is awarded towards loss of estate. The amount awarded by the Tribunal under the head of funeral expenses 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 Pecuniary	2,25,000	6,75,000	Enhanced
2.	Loss of love and affection	1,00,000	80,000	Reduced
3.	Funeral Expenses	15,000	15,000	Confirmed
4.	Loss of estate	-	15000	Granted
	Total	3,40,000	7,85,000/-	Enhanced by Rs.4,45,000/-

11. As far as C.M.A.No.2878 of 2017 is concerned, it is the contention of the appellants that the deceased was the proprietor of scraps and provision store and was earning a sum of Rs.25,000/- per month and marked as Ex.P.9 Income Tax returns to prove the same. However, a perusal of Ex.P.9 reveals that it pertains to the year 2005 to 2009. In view of the same, the Tribunal fixed the notional income of the deceased, as Rs.6000/- per month. The accident is of the year 2011 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.9000/- per month is fixed as the notional income of the deceased. The deceased was aged about 39 years at the time of accident. The Tribunal has not awarded any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. Thus, the amount awarded by the Tribunal towards pecuniary loss, is enhanced to Rs.17,01,000/- $(9000 + 3600 (9000/- \times 40\%) \times 12 \times 15 \times \frac{3}{4})$. The Tribunal has awarded excessive amount of Rs.50,000/- towards loss of consortium and the same is reduced to Rs.40,000/-. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal under the heads loss of love and affection and funeral expenses are just and reasonable and hence, the same are 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 pecuniary	8,64,000	17,01,000	Enhanced
2.	Loss of consortium	50,000	40,000	Reduced
4.	Loss of love and affection	75,000	75,000	Confirmed
5.	Loss of estate	-	15000	Granted
6.	Funeral Expenses	15000	15000	Confirmed
	Total	Rs.10,04,000/-	Rs.18,46,000/-	Enhanced by Rs.8,42,000/-

12. In the result, both the C.M.As are partly allowed and the compensation amounts awarded by the Tribunal at Rs.3,40,000/- and 10,04,000/- are hereby enhanced to Rs.7,85,000/- and Rs.18,46,000/- respectively along with the interest at the rate of 7.5% per annum from the date of petition till the date of deposit. In both the appeals, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is 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 in C.M.A.No.2877 of 2017 are permitted to withdraw their respective shares 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 appellants 1, 3 and 4 in C.M.A.No.2878 of 2017 are permitted to withdraw their respective shares 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 filing necessary applications before the Tribunal. The share of the minor/2nd appellant in C.M.A.No.2878 of 2017 is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st

appellant in C.M.A.No.2878 of 2017, mother of the minor 2nd appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd appellant. No Costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

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

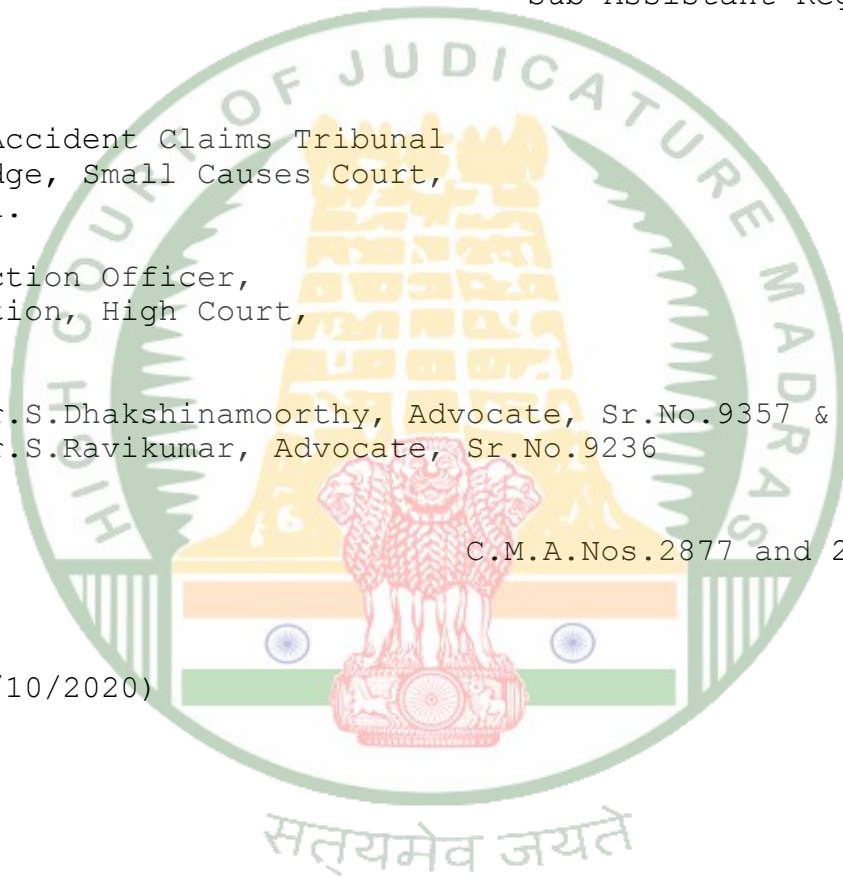
+2cc to Mr.S.Dhakshinamoorthy, Advocate, Sr.No.9357 & 9358

+1cc to Mr.S.Ravikumar, Advocate, Sr.No.9236

C.M.A.Nos.2877 and 2878 of 2017

sai (co)

rr ii (01/10/2020)



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