



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.96 of 2021

1.R.Saraswathi

2.Minor Dhinesh

3.Minor Manoj

(Minor appellants 2 and 3 rep. by
their mother R.Saraswathi/1st appellant)

4.Kamatchi

.. Appellants/Petitioners

Vs.

1.Maria Bright Allwin

2.ICICI Lombard General Insurance

Company Limited

Third Party cell at

No.84/85, Arihant plaza, I floor

Wall tax road, Chennai-3.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.02.2020 made in M.C.O.P.No.306 of 2019 on the file of Motor Accident Claims Tribunal, III Additional District Court, Tiruvallur at Poonamallee.

For Appellants : Mr.U.Chithambaram
for Mr.K.Varadha Kamaraj

For R2 : Mrs.R.Sreevidhya



WEB COPY

JUDGMENT

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 18.02.2020 made in M.C.O.P.No.306 of 2019 on the file of Motor Accident Claims Tribunal, III Additional District Court, Tiruvallur at Poonamallee.

2.The appellants are claimants in M.C.O.P.No.306 of 2019 on the file of Motor Accident Claims Tribunal, III Additional District Court, Tiruvallur at Poonamallee. They filed the said claim petition claiming a sum of Rs.35,00,000/- as compensation for the death of one N.Ramesh, who died in the accident that took place on 25.04.2019.

3.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 Taurus lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.20,07,500/- 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 working as a lorry driver and was earning a sum of Rs.25,000/- per month. The appellants have marked driving license of the deceased as Ex.P6 to prove the avocation. The Tribunal without considering the same, erred in fixing a meagre sum of Rs.10,000/- per month as notional income of the deceased. The deceased was aged 39 years at the time of accident. The Tribunal ought to have granted 40% enhancement instead of 25% 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 failed to produce any document to prove the income of the deceased. In the absence of any material to prove the income of the deceased, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased, which is not meagre. The total compensation awarded by the Tribunal under different heads are 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. From the materials on record, it is seen that it is the contention of the appellants that the deceased was working as a lorry driver and was earning a sum of Rs.25,000/- per month. The appellants have marked driving license of the deceased as Ex.P6 to prove the avocation. The appellants failed to produce any document to prove the income of the deceased. In the absence of any material evidence with regard to income of the deceased, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased, which is meagre. The accident is of the year 2019 and hence, a sum of Rs.15,000/- per month is fixed as notional income of the deceased. As per Ex.P6/driving license of the deceased and Ex.P7/School Transfer Certificate, the date of birth of the deceased is mentioned as 03.08.1979. On the date of accident, the deceased completed 39 years 8 months 22 days. In view of the same, the deceased was aged only 39 years at the time of accident. The Tribunal erroneously fixed the age of the deceased as 40 years. As per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), the appellants are entitled to 40% enhancement towards future prospects. The Tribunal applied multiplier '15' and deducted 1/4th towards personal expenses of the deceased, which are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.28,35,000/- (Rs.15,000/- + 6000 [Rs.15,000/- X 40%] X 12 X 15 X 3/4). The Tribunal awarded a sum of Rs.2,50,000/- towards loss of love and affection, which is excessive. The appellants 2 to 4 are entitled to Rs.40,000/- towards loss of love and



affection. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

WEB COPY

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	16,87,500	28,35,000	Enhanced
2.	Loss of love and affection to the appellants 2 to 4	2,50,000	40,000	Reduced
3.	Loss of consortium	40,000	40,000	Confirmed
4.	Loss of estate	15,000	15,000	Confirmed
5.	Funeral expenses	15,000	15,000	Confirmed
	Total	20,07,500	29,45,000	Enhanced by Rs.9,37,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.20,07,500/- is hereby enhanced to Rs.29,45,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the 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 and 4 are permitted to withdraw their respective share of the award amount now determined by this Court 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 minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minors attain majority. The 1st appellant being mother of the minor appellants 2 and 3 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

The III Additional District Judge,
Motor Accident Claims Tribunal,
Tiruvallur at Poonamallee.

Copy To

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.6327

C.M.A.No.96 of 2021

RR(CO)
RLP(30/09/2021)