

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4272 of 2019

1.Arokia Priya @ Priya

2.Minor Niranjan Bose

3.Minor Nishali

(Minors 2 and 3 rep. By their next friend and mother, Arokia Priya @ Priya)

4.Charles @ Aruldoss @ Sakkaravarthi

5.Santhi @ Santhana Marie ... Appellants/Petitioners

Vs.

1.Mohanavel

2.The Branch Manager,
The United India Insurance Co. Ltd.,
No.50, Jeevanandham Street,
Karaikal Town and District Munsif.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.03.2018, made in M.C.O.P. No.160 of 2015, on the file of the District Court, (Motor Accident Claims Tribunal), Karaikal.

For Appellants : Mr.N.U.Prassana
for M/s.T. Saikrishnan

For Respondents: No appearance (For R1)
Mr.C.Harini (For R2)
for M/s. M.B.Gopalan Associates

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 15.03.2018, made in M.C.O.P. No.160 of 2015, on the file of the District Court, (Motor Accident Claims Tribunal), Karaikal.

2.The appellants filed M.C.O.P. No.160 of 2015, on the file of the District Court, (Motor Accident Claims Tribunal), Karaikal, claiming a sum of Rs.49,00,000/- as compensation for the death of one Arokiadoss @ Arokiaraj who died in the accident that took place on 21.04.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent riding by 1st respondent, rider-cum-owner of the Motorcycle and directed the respondents to jointly and severally pay a sum of Rs.14,18,400/- as compensation to the appellants.

4.Not being satisfied with the amounts granted by the award dated 15.03.2018, made in M.C.O.P. No.160 of 2015, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was working as a Mason and was earning a sum of Rs.500/- per day and Rs.15,000/- per month. They examined P.W.1, son of the deceased and P.W.3 - employer of the deceased and marked Ex.P12 - certificate issued by P.W.3, in support of their case. The Tribunal failed to consider the same and erroneously fixed a sum of Rs.6,500/- per month as notional income, which is lesser than the minimum wages. The Tribunal failed to award any amount for loss of estate. The amounts awarded by the Tribunal towards future prospects and loss of consortium are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any valid documents to prove the avocation and income of the deceased, fixed a sum of Rs.6,500/- per month as notional income, granted 40% enhancement towards future prospects, applied multiplier '16' and awarded compensation towards loss of income. The same 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 the compensation and prayed for dismissal of the appeal.

7. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

8. Heard through video conference the learned counsel appearing for the appellants as well as the 2nd respondent- Insurance Company and perused the materials available on record.

9. From the materials on record, it is seen that it is the case of the appellants that at the time of accident, the deceased was working as a Mason and was earning a sum of Rs.15,000/- per month. They examined P.W.3 - employer of the deceased who deposed that the deceased was earning Rs.500/- per day as income, working as Maistry at Korakal Constructions Company. In his cross examination, P.W.3 deposed that owner of the company is one Bandarinathan. In the absence of any evidence by owner of the company regarding avocation of the deceased and failure to produce wage register, the Tribunal fixed a sum of Rs.6,500/- per month as notional income of the deceased. The accident is of the year 2015. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.14,000/- per month is fixed as notional income of the deceased. The appellants have contended that the deceased was aged 34 years at the time of accident. The Tribunal rightly granted 40% enhancement, adopted multiplier '16' and deducted 1/4th towards personal expenses of the deceased. By fixing Rs.14,000/- per month as notional income, the compensation awarded by the Tribunal towards loss of income is modified to Rs.28,22,400/- {[Rs.14,000/- + Rs.5,600/- (40% of Rs.14,000/-)] x 12 x 16 x 3/4}. The Tribunal has awarded a sum of Rs.40,000/- towards loss of love and affection to the appellants 2 to 5. The same is meagre. The appellants 2 and 3 who are the minor children of the deceased are each entitled to a sum of Rs.40,000/- towards loss of love and affection and the appellants 4 and 5 who are the parents of the deceased are each entitled to a sum of Rs.20,000/- towards loss of love and affection. The amount of Rs.3,000/- awarded by the Tribunal towards transportation is meagre and hence, the same is enhanced to Rs.7,500/-. The Tribunal failed to award any amount for loss of estate. The appellants are entitled to a sum of Rs.15,000/- for loss of estate.

10. 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
1.	Loss of income	13,10,400/-	28,22,400/-	Enhanced
2.	Loss of love and affection to the appellants 2 & 3	50,000/-	80,000/-	Enhanced
3.	Loss of love and affection to appellants 4 & 5		40,000/-	
4.	Loss of consortium	40,000/-	40,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
6.	Loss of estate	-	15,000/-	Granted
7.	Transportation	3,000/-	7,500/-	Enhanced
	Total	14,18,400/-	30,19,900/-	Enhanced by Rs.16,01,500/-

11. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.14,18,400/- is enhanced to Rs.30,19,900/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.160 of 2015. On such deposit, the appellants 1, 4 and 5 are permitted to withdraw their share of the award amount, now determined by this Court, 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 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. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.16,01,500/-, enhanced by this Court as per the order of this Court dated 30.10.2019, made in C.M.P. No.5608 of 2019 in C.M.A. SR.23456 of 2019. The appellants are directed to pay the necessary court fee on the enhanced award amount. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa
To

- 1.The District Judge,
(Motor Accident Claims Tribunal),
Karaikal.
- 2.The Section Officer,
V.R Section,
High Court, Madras.

C.M.A.No.4272 of 2019

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