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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3099 of 2019

1.M.Rathika
2.M.Munusamy

..Appellants/Petitioners

Vs.

1.S.Chidambara Thanu
2.The National Insurance Company Limited,
No.751, Anna Salai,
Chennai - 600 002.

..Respondents/Respondents

(R1 remained exparte before Tribunal.
Hence, notice to R1 dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.07.2018 made in M.C.O.P.No.365 of 2015 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee.

For Appellants : Mr.K.Varadhakamaraj
For R2 : Mr.D.Bhaskaran

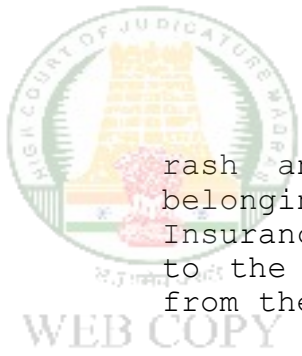
J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 11.07.2018 made in M.C.O.P.No.365 of 2015 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee.

3.The appellants are the claimants in M.C.O.P.No.365 of 2015 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of their son viz., Bhuvanesh, who died in the accident that took place on 30.05.2015.

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



rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.5,98,930/- as compensation to the appellants at the first instance and recover the same from the 1st respondent.

5. Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

6. The learned counsel appearing for the appellants contended that the Tribunal erroneously fixed income of the deceased at Rs.30,000/- per annum which is meagre. The Tribunal failed to consider the occupation, income and future prospects of the deceased. The Tribunal ought to have fixed notional income of the deceased at Rs.10,000/- per month. The Tribunal failed to grant compensation for loss of love and affection. The amounts awarded by the Tribunal towards funeral expenses is meagre and prayed for enhancement of compensation.

7. Per contra, Mr.D.Bhaskaran, learned counsel appearing for the 2nd respondent-Insurance Company contended that the deceased was a student aged 13 years, a non-earning member at the time of accident. As per II Schedule only, income has to be fixed for non-earning member at Rs.15,000/- per annum and multiplier applicable is '15'. The Tribunal erroneously fixed a sum of Rs.30,000/- as annual income and applied multiplier '17' taking into consideration the age of the mother of the deceased and granted excess amount as compensation towards loss of dependency. A sum of Rs.40,000/- awarded by the Tribunal towards loss of consortium is not warranted. In view of the same, appellants are not entitled to any compensation for loss of love and affection and total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

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

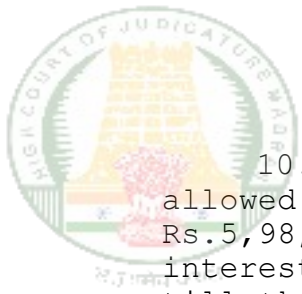
9. From the materials available on record it is seen that the son of the appellants viz., Bhuvanesh was a minor boy aged 13 years and was a non-earning member at the time of accident. The said Bhuvanesh died due to the injuries sustained in the accident that took place on 30.05.2015. As per II Schedule, the annual income is fixed at Rs.15,000/- for a non-earning member. The Hon'ble Apex Court in the judgment reported in 2013 (2) TNMAC 358 (SC), [Kishan Gopal & another Vs. Lala & others], considering the passage of time from the date of II Schedule and rise in cost of living, fixed annual income of a non-earning member at Rs.30,000/-. This Court considering the facts of the



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case, fixed a sum of Rs.45,000/- per annum in some cases for a non-earning member. In the present case, the accident is of the year 2015. Considering the entire materials and date of accident, the annual income of the deceased is fixed at Rs.45,000/- per annum. The contention of the learned counsel appearing for the appellants that income of the deceased has to be fixed at Rs.10,000/- per month is contrary to the II Schedule and contrary to the judgments of the Hon'ble Apex Court and this Court. While calculating the loss of dependency, the age of the mother of the deceased has to be taken into consideration for applying multiplier. The Tribunal applied multiplier '17' taking into consideration the age of the deceased. The correct multiplier applicable as per II Schedule is '15'. By applying multiplier '15' and fixing annual income of the deceased at Rs.45,000/-, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.6,75,000/- (Rs.45,000/- X 15). The appellants who are the parents of the deceased are not entitled to any amount towards loss of consortium. Hence, a sum of Rs.40,000/- awarded by the Tribunal towards loss of consortium is liable to be set aside and it is hereby set aside. The Tribunal has not awarded any amount towards loss of love and affection. The appellants are entitled to a sum of Rs.40,000/- towards loss of love and affection. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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 dependency	5,10,000/-	6,75,000/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Medical expenses	18,930/-	18,930/-	Confirmed
5.	Loss of consortium	40,000/-	-	Set aside
6.	Loss of love and affection	-	40,000/-	Granted
	Total	Rs.5,98,930/-	Rs.7,63,930/-	Enhanced by Rs.1,65,000/-



10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,98,930/- is hereby enhanced to Rs.7,63,930/- 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 to the credit of M.C.O.P.No.365 of 2015 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee, at the first instance and recover the same from the 1st respondent. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the appellants are not entitled to any interest for Rs.1,65,000/-, the amount now enhanced by this Court, as per the order of this Court dated 02.08.2019 made in C.M.P.No.13469 of 2019 in C.M.A.No.SR.25116 of 2019. No costs.

s/d-
Assistant Registrar(CS-IX)

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Sub-Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
II Additional District Judge,
Poonamallee.

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

+1 Cc to Mr.K.Varadhakamaraj, Advocate sr 999.

C.M.A.No.3099 of 2019

VBA(CO)
SP(09/09/2021)