

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.963 of 2021

1.A.Poongavanam
2.V.Anbalagan
3.A.Anitha

.. Appellants/Petitioners

Vs.

1.M.Dhina

2.ICICI Lombard General Insurance Company Limited,
Chotah Bhai Centre,
2nd Floor, #140, Nungambakkam High Road,
Chennai - 600 034. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.02.2019 made in M.C.O.P.No.345 of 2016, on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

For Appellants : Mr.R.Kishore
for Mr.A.N.Viswanatha Rao

For R2 : Mrs.R.Sreevidhya

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 22.02.2019 made in M.C.O.P.No.345 of 2016, on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

3.The appellants are the claimants in M.C.O.P.No.345 of 2016, on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one A.Arun @ Arun Kumar, who died in the accident that took place on 21.06.2015.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the motorcycle owned by 1st respondent and directed the 2nd respondent to pay a sum of Rs.10,17,200/- 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 at the time of accident the deceased was aged 18 years, studying XII standard at M.G.R.Hr.Sec.School, Jafferkhanpet, Chennai - 600 078. The notional income of the deceased fixed by the Tribunal at Rs.6,000/- per month is meagre. The Tribunal ought to have fixed atleast a sum of Rs.12,000/- as monthly income of the deceased and awarded compensation. The amount awarded by the Tribunal towards loss of love and affection is meagre and prayed for enhancement of compensation.

7.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the deceased was a School Student. A sum of Rs.6,000/- per month fixed by the Tribunal as notional income of the deceased, a non-earning member is excessive. The amount awarded by the Tribunal towards loss of love and affection is not meagre. The Tribunal considering entire materials on record, has awarded a sum of Rs.10,17,200/- as compensation to the appellants, which 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.It is the case of the appellants that at the time of accident the deceased was a XII standard student, aged 18 years studying at M.G.R.Hr.Sec.School, Jafferkhanpet, Chennai - 600 078. The Tribunal following the Division Bench judgment of this Court reported in 2015 (2) TNMAC 490 (DB), [National Insurance Company Limited Vs. R.Vimala], fixed a sum of Rs.6,000/- 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. Considering the age of the deceased, a sum of Rs.10,000/- per month is fixed as notional income of the deceased. As per Ex.P4/Death Certificate, the deceased was aged 18 years at the time of accident. The Tribunal following the judgments of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme

Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] and 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others] rightly applied multiplier '18' and granted 40% enhancement towards future prospects. The deceased was a bachelor at the time of accident and the Tribunal has rightly deducted 50% towards personal expenses of the deceased. Thus, by fixing Rs.10,000/- per month as notional income of the deceased, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.15,12,000/- {Rs.14,000/- [Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-)] X 12 X 18 X $\frac{1}{2}$ }. The appellants 1 & 2 are the parents of the deceased and they have lost their son at young age and the 3rd appellant is the sister of the deceased. In view of the same, the amount awarded by the Tribunal towards loss of love and affection is meagre. The appellants 1 & 2 are entitled to a sum of Rs.40,000/- each towards loss of love and affection and the 3rd appellant is entitled to a sum of Rs.20,000/- towards loss of love and affection. This Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

10. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has 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 dependency	9,07,200/-	15,12,000/-	Enhanced
2.	Loss of love and affection	75,000/-	1,00,000/-	Enhanced
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	Rs.10,17,200/-	Rs.16,47,000/-	Enhanced by Rs.6,29,800/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.10,17,200/- is hereby enhanced to Rs.16,47,000/- 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 to the credit of M.C.O.P.No.345 of 2016, on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai, 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. The appellants are directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

krk

To

1.The Special Subordinate Judge No.I,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

Copy to:
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mrs.R.Sree Vidya, Advocate, S.R.No.20694

C.M.A.No.963 of 2021

PM(CO)
CB(13/07/2021)

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26.03.2021

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