



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

C.M.A.No.1842 of 2020

1. C. Lalitha
2. C. Bharath
3. C. Ratheesh

.. Appellants/Petitioners

Vs.

1. R.Rishab Bafna
2. R. Rameshkumar
3. M/s.Reliance General Insurance Co-ltd.,  
2<sup>nd</sup> Floor, No.43B, Sri Abfirmal Tower,  
Cowley brown Road,  
R.S. Puram,  
Coimbatore-2.

4. P.Narayanasamy

5. M/s.Reliance General Insurance Co-ltd.,  
2<sup>nd</sup> Floor, No.43B, Sri Abfirmal Tower,  
Cowley brown Road,  
R.S. Puram,  
Coimbatore-2.

...Respondents/Respondents

(4th Respondent remain exparte before the tribunal,  
notice may be dispensed with the 4th respondent)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.07.2019 made in M.C.O.P.No. 767 of 2015 on the file of the Motor Accident Claims Tribunal/1V, Additional District Judge, Coimbatore.

For Appellants : Mr.M. Guruprasad

For Respondents : M/s.C.Bhuvana Sundari for R3 and R5

R1, 2- No appearance

R4 Exparte in Lower Court itself



## J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 31.07.2019 made in M.C.O.P.No. 767 of 2015 on the file of the Motor Accident Claims Tribunal/1V, Additional District Judge, Coimbatore.

2.The Appellants is the claimants in M.C.O.P.No. 767 of 2015 on the file of the Motor Accident Claims Tribunal/1V, Additional District Judge, Coimbatore. They filed the above said claim petition, claiming a sum of Rs.16,00,000/- as compensation on account of the death of the deceased, who succumbed to injuries in the accident that took place on 19.05.2015.

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 alleged vehicle belonging to the 2<sup>nd</sup> respondent and directed the 3<sup>rd</sup> & 5<sup>th</sup> Respondents-Insurance Companies to pay a sum of Rs.6,76,000/- as compensation to the Appellants.

4.Not being satisfied with the amounts awarded by the Tribunal, the Appellants has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the Appellants contended that the Tribunal having found that the accident occurred on account of negligent driving of the 1st Respondent, ought to have awarded the entire compensation, in favour of the Claimants, without deducting 15% contributory negligence on the part of the deceased, for not wearing helmet. He further submitted that the Claims Tribunal has fixed the monthly income of the deceased at Rs. 8,250/- which is very low and the compensation awarded towards other heads are also meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the Respondents 3 and 4 contended that in the absence of any material evidence with regard to avocation and income of the deceased and on non examination of the employer, a sum of Rs.7,500/- per month fixed by the Tribunal as monthly income of the deceased is excessive. The total compensation awarded by the Tribunal at Rs.6,76,000/- is highly excessive. The Appellants has 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 learned counsel appearing for the 3<sup>rd</sup> & 5<sup>th</sup>



respondents and perused the entire materials on record.

8. Insofar as the monthly income of the deceased is concerned, in this case, P.W.1 stated that the deceased was a Security incharge in Jaya Enclave Owners Welfare Association and was earning a sum of Rs. 15,000/- per month. Eventhough the Appellants have marked Ex.P10-Salary certificate, no witness was examined to prove the same. The Tribunal by considering the various decisions of Hon'ble Supreme Court as well as this Court has fixed a sum of Rs.7,500/- per month as notional income of the deceased, which is very low, on account of the cost of living prevailing as on date. Therefore, the monthly income of the deceased is enhanced from Rs.7,500/-per month to Rs.8,500/- per month.

9. Further, considering the age of the deceased, 10% was awarded towards future prospects by the Tribunal and by there are three Dependants for the deceased , deducting 1/3rd towards personal expenses and by adopting multiplier 11, the compensation awarded towards the future prospect is enhanced from Rs.7,26,000/- ([Rs.7500+750]-2750x12x11) to Rs.8,22,888/- ([Rs.8,500+850]-3,116x12x11).

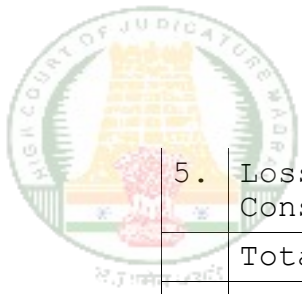
10. Taking note of the fact that no compensation has been awarded towards loss of Love and Affection, considering the fact that the Appellants/Claimants 2 and 3 lost their father a sum of Rs. 80,000/- (Rs.40,000/- each) is awarded towards loss of love and affection.

11. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, same are hereby confirmed.

12. As deceased was not wearing helmet at the time of the accident, the Tribunal has rightly deducted 15% towards the contributory negligence of the deceased and therefore the same does not warrant interference.

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.    | Future prospects           | 7,26,000                        | 8,22,888                          | Enhanced                               |
| 2.    | Funeral expenses           | 15,000                          | 15,000                            | Confirmed                              |
| 3.    | Loss of Love and affection | Nil                             | 80,000                            | Granted                                |
| 4.    | Loss of estate             | 15,000                          | 15,000                            | Confirmed                              |



|    |                     |               |               |               |
|----|---------------------|---------------|---------------|---------------|
| 5. | Loss of Consortium  | 40,000        | 40,000        | Confirmed     |
|    | Total               | 7,96,000/-    | 9,72,888/-    | Enhanced      |
|    | Less 15% negligence | 1,19,400      | 1,45,933      | Enhanced by   |
|    | Total               | Rs.6,76,600/- | Rs.8,26,955/- | Rs.1,50,355/- |

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,76,600/- is hereby enhanced to Rs.8,26,955/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3<sup>rd</sup> & 5<sup>th</sup> respondents-Insurance Companies are 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 eight weeks from the date of receipt of a copy of this Judgment, to the credit of M.C.O.P.No.767 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Coimbatore. On such deposit being made, the Tribunal is directed to transfer the Award amount, as per the shares apportioned by the Tribunal, directly to the Bank account of the Appellants/Claimants through RTGS, within a period of two weeks. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving interest for the period of delay in question, the interest portion for that period should be excluded for the purpose of granting interest. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

arr/shk  
To

1.Motor Accident Claims Tribunal-I,  
(Special District Judge at Triuvallur).  
Tiruvallur.

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

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.40494

C.M.A.No.1842 of 2020

RP(CO)  
CB(29/10/2021)