



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29.06.2021	DELIVERED ON: .07.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.2758 of 2014

1.P.Rajendran

2.R.Sarasammal

3.Minor.R.Kesavan

..Appellants/Petitioners

(Minor 3rd appellant represented by
his Father & Next Friend,
P.Rajendran, 1st appellant herein)

Vs.

1. U.R.Ayyavvu Naicker

(R1 remained exparte before Tribunal)

2. New India Assurance Company Limited,
Motor Third Party Claims Cell,
No.45, Moore Street,
Chennai - 600 001.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 01.03.2014 made in M.C.O.P.No.3079 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellants : Ms.P.T.Salim Fathima

For R2 : Ms.S.R.Sumathy

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 01.03.2014 made in M.C.O.P.No.3079 of 2012 on the file of



the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellants are the claimants in M.C.O.P.No.3079 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the death of one R.Paulswamy alias Rajesh, Son of the appellants 1 & 2 and Brother of the 3rd appellant, who died in the accident that took place on 15.06.2012.

3.According to appellants, on 15.06.2012 at about 16.45 hours, while the said R.Paulswamy alias Rajesh was proceeding in the cycle from West to East direction on the left side of the Manaparai - Viralur Kutt Road, from Government Higher Secondary School Kavarappatti to V.Edyapatti Village, the driver of the Mini Bus bearing Registration No.TN 45 B 6269, who was driving the bus behind the said R.Paulswamy alias Rajesh, came in a rash and negligent manner at a high speed endangering public safety and dashed behind the bicycle driven by the said R.Paulswamy alias Rajesh and caused the accident. In the accident, the said R.Paulswamy alias Rajesh sustained fatal injuries and died on the spot. Therefore, the appellants filed the above said claim petition claiming a sum of Rs.7,00,000/- as compensation for the death of the said R.Paulswamy alias Rajesh against the respondents, being the owner and insurer of the mini bus respectively.

4.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 mini bus belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.5,50,000/- as compensation to the appellants.

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 15 years, studying 10th Standard at Government Higher Secondary School, Kavarappatti, Pudukottai District and a sum of Rs.30,000/- per annum fixed by the Tribunal as notional annual income of the deceased is meagre. The Tribunal has not awarded any amount towards loss of expectation of life. The total compensation awarded by the Tribunal at Rs.5,50,000/- is meagre and prayed for enhancement of compensation.

7.Per contra, Mr.S.Arunkumar, learned counsel appearing for

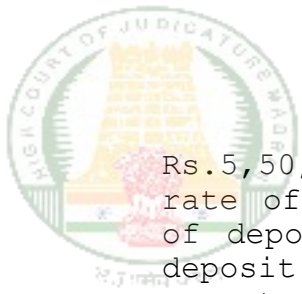


the 2nd respondent-Insurance Company contended that the deceased was a School student aged 15 years, studying 10th Standard, a non-earning member at the time of accident and a sum of Rs.30,000/- fixed by the Tribunal as notional annual income of the deceased is excessive. The amounts awarded by the Tribunal towards funeral expenses and loss of love and affection are excessive. The total compensation awarded by the Tribunal is not meagre. The appellants have not made out any case for enhancement of compensation 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 claim of the appellants in the claim petition that the deceased R. Paulswamy alias Rajesh was a minor boy, aged 15 years, studying 10th standard and was a non-earning member at the time of accident. As per Ex.P4/School Certificate, the deceased was aged 14 years at the time of accident. The Tribunal considering the age of the deceased and also the fact that the deceased was a non-earning member at the time of accident, following the judgment of the Hon'ble Apex Court reported in 2013 (2) TNMAC 358 (SC), [Kishan Gopal & another Vs. Lala & others] fixed a sum of Rs.30,000/- as annual income of the deceased, applied multiplier '15' and awarded a sum of Rs.4,50,000/- as compensation for loss of dependency. As per the recent judgment of the Hon'ble Apex Court reported in 2020 ACJ 2211, [Rajendra Singh and others Vs. National Insurance Company Limited and others], the Hon'ble Apex Court has fixed a sum of Rs.36,000/- per annum as notional income of the deceased non-earning minor child, deducted 50% towards personal expenses of the deceased minor child, applied multiplier '15' and awarded compensation for loss of dependency. In the present case, the Tribunal has fixed a sum of Rs.30,000/- as annual income of the deceased and has not deducted any amount towards personal expenses of the deceased. Further, the amount awarded by the Tribunal towards loss of love and affection is meagre and also the Tribunal has not awarded any amount towards loss of estate. But in view of the failure on the part of the Tribunal for not deducting any amount towards personal expenses of the deceased and granting excessive amounts for loss of dependency and funeral expenses, the appellants are not entitled to any enhancement towards loss of love and affection and also not entitled to any amount towards loss of estate. The total compensation awarded by the Tribunal is not interfered with and the same is hereby confirmed.

10. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at



Rs.5,50,000/- is hereby confirmed 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 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.3079 of 2012 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. On such deposit, the appellants 1 & 2 are permitted to withdraw their respective share of the award amount, 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 share of the minor 3rd appellant is directed to be deposited in any one of the Nationalized Banks, till the minor 3rd appellant attains majority. On such deposit, the 1st appellant, being the Father of the minor 3rd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor 3rd appellant. No costs.

Sd/-
Assistant Registrar(JJ Act)

//True Copy//

Sub Assistant Registrar

krk

To

The III Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

Copy To

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

+1cc to Mr.P.T.Salim Fathima, Advocate, S.R.No.36654

C.M.A.No.2758 of 2014

AJS (CO)
RGA(18/11/2021)