IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A.NO.3687 OF 2014

1.M.Prema
2.M.Rajeswari
3.M.Gomathi .. Appellants/Claimants

.Vs.

1. K.Balasundaram

2. The New India Assurance Company Ltd.,
No.45, Moore Street, V Floor,
Chennai-1. .. Respondents/Respondents

Prayer:
This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.09.2007, made in M.C.O.P.No.54 of 2007 (TMCOP.No.354 of 2005), on the file of the Principal District Judge, Thiruvallur.

For Appellants	:	Mr.K.R.Ponnusamy for M/s.Anand & Surya
For Respondents	:	Mr.R.Neethe Perumal -R2 Notice unserved – R1 Not ready notice - R1

J U D G M E N T

The matter is heard through "Physical Hearing".

This Civil Miscellaneous Appeal has been filed by the claimants against the judgment and decree dated 28.09.2007, made in T.M.C.OP.No. 54 of 2007 (MCOP.No. 354 of 2005), on the file of the Principal District Judge, Thiruvallur.

2.The appellants are claimants in T.M.C.OP.No. 54 of 2007 (MCOP.No. 354 of 2005), on the file of the Principal District Judge, Thiruvallur, have filed the claim petition before the tribunal, claiming a sum of Rs.5,00,000/- as compensation for the death of M.Iyyappan in the road accident that took place on

14.02.2005.

3. Brief facts of the case is that on 14.02.2005 at 12.00 hrs, the deceased was travelling as a pillion rider in a Suzuki Motor cycle bearing registration number TN04-E-9747. While proceeding on the Old Mahabalipuram Road, Opposite Classic Pharms Road Junction, at that time, a Mahendra Van bearing Reg.No.TN21-R-5432 which was coming on the same road, driver by its driver in a rash and negligent manner, endangering to public safety, suddenly turned towards the Classic Pharma Road and hit the Suzuki Motorcycle, due to which the deceased pillion rider and rider of the motorcycle sustained fatal and grevious injuries. The accident had occurred only due to the negligence on the part of the driver of the Mahendra Van. Hence, the claimants/ legal heirs of the deceased filed a claim petition before the tribunal, claiming a sum of Rs.5,00,000/- as compensation for the death of the deceased.

4. The tribunal upon considering the oral and documentary evidence, has concluded that the accident had occurred only due to the rash and negligence driving on the part of the driver of the Mahendra Van and fixed the liability on the owner and insurer of the vehicle/ respondents 1 & 2 and directed them to pay the compensation amount of Rs.2,50,000/- jointly and severally.

5. Dissatisfied with the said award passed by the tribunal, the claimants/appellants herein have preferred the present appeal for enhancement of compensation.

6. The learned counsel appearing for the appellants/ claimants submitted that the tribunal without considering the avocation of the deceased, who was earning a sum of Rs.5,000/- per month as a Power Press Operator in a private concern, had wrongly fixed the notional income of the deceased at Rs.2000/- per month. The learned counsel further submitted that the deceased was aged 22 years at the time of the accident, but the tribunal has taken the age of the mother for adopting muliplier and calculated very meagre amount for loss of income of the deceased without adding future prospects. The learned counsel for the appellants further submitted that tribunal has awarded only a sum of Rs.10,000/- towards funeral expenses, medical expenses, love and affection and transportation expenses. It is the contention of the learned counsel for the appellants that the compensation awarded by the tribunal at Rs.2,50,000/- is very less and ought to have allowed full and just compensation.

7. On the other hand, the learned counsel appearing for the 2nd respondent/Insurance Company submitted that the tribunal after considering the oral and documentary evidence, has rightly

fixed the monthly income and adopted the multiplier by taking the age of the mother. Therefore, nothing warrants to interfere with the award passed by the tribunal.

8. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the 2nd respondent/ Insurance Company and perused the materials available on record.

9. Before the tribunal 1st appellant/claimant was examined herself as PW1 and also examined PW2 & PW3 on their side and marked 13 documents Ex.A1 to A13. On the side of the respondents no witnesses were examined and no documents were marked.

10. From a perusal of records, it is seen that one Kannan was examined as eyewitness/PW3, he deposed that a Mahindra Van bearing Reg.No.TN21-R-5432 was driven by its driver in a very rash and negligent manner and suddenly turned towards the Classic Pharma Road and hit the Suzuki Motorcycle bearing Reg.No. TN04-E-9747 and also dashed against him. Ex.A1/FIR and Ex.A8/A copy of Charge Sheet confirms the statement made by PW3. The tribunal has rightly observed the said facts and concluded that the accident had occurred only due to the rash and negligence driving on the part of the driver of the Mahendra Van and fixed the liability on the owner and insurer of the vehicle/ respondents 1 & 2 and directed them to pay the compensation amount jointly and severally. This Court finds no error on the liability fixed by the tribunal and confirms the same.

11. As far as the compensation awarded by the tribunal, it is seen that the tribunal without considering Ex.P7/Postmortem report, which clearly shows that the deceased was aged about 22 years, has taken the age of the mother for adopting mulitplier method. This Court is of the opinion that when there is a clear document to prove the age of the deceased, the tribunal need not go for an alternative method for fixing the age of the mother. Therefore, this Court modifies the sum awarded by the tribunal for loss of income by taking the age of the deceased.

12. In this context, it is useful to refer the judgment delivered by the Hon'ble Division Bench of this Court reported in 2020(1)TNMAC 449 (DB) in the case of Manikandan Vs P.Palani. The relevant portion is extracted below;

> 31. Apart from that, this Court has to consider the beneficial nature of the legislation. Chapter X to XII of the Motor Vehicles Act, 1938 were incorporated by the Parliament for the benefit of innocent motor accidents victims. The beneficial nature of the Act has been declared by the Hon'ble Supreme Court in a number of cases including in National Insurance Co. Ltd. v.

Swaran Singh and others, 2004 (1) TN MAC 104 (SC) : 2004 (2) SCC 297 (IV Judges Bench), in Ningamma and another v. United India Insurance Co. Ltd., 2009 (2) TN MAC 169 (SC) : 2009 ACJ 2020 and in Sohan Lal Passi v. P. Sesh Reddy, AIR 1996 SC 2627. This Court is duty bound to keep in mind the social welfare and beneficial legislation, while dealing with claims under the act. Technicalities should be divorced when deciding the matter arising out of Motor Vehicles Act claims and justice should be rendered completely. The compensation awarded should be fair and reasonable and should not be arbitrary or very low. In an endeavour to render justice only, this Court awards compensation more than claimed by the claimants in the Petition.

32. This Court under Section 173 of the Motor Vehicles Act can re-appreciate the whole evidence to decide the matter. This Court draws support for the aforesaid proposition from the Apex Court judgment in Smt. Thokchom Onger Sangeetha v. Oriental Insurance Co., 2008 (1) TN MAC 59 (SC): AIR 2008 SC 245. It is settled law that an Appeal is the continuation of original proceedings and this Court can decide the matter independently and award "Just compensation".

33. Under Order 41, Rule 33 read with section 151 of Civil Procedure Code, in order to render justice this Court can award more compensation based on the evidence. The power and the discretion are vested with this Court to enhance the amount according to the facts of the case, if the compensation awarded by the Tribunal is not "just". Even in the absence of any Appeal/Cross-Appeal by the claimants, this Court can enhance the compensation in this Appeal preferred by the Insurer. The aforesaid proposition has been settled by the Hon'ble Supreme Court in -

(1) Nagappa v. Gurudayal Singh And Others, 2004 (2) TN MAC 398 (SC) : 2003 (2) SCC 274.

(2)Mahant Dhangir And Another v. Madan Mohan And Others, AIR 1938 SC 54.

(3) State Of Punjab v. Bakshish Singh, 1998 (8) SCC 222.

(4) The APSRTC And Another v. Rama Devi And Others, 2008 (1) TN MAC 234 (SC).

(5) M.D., Pallavan Transport Corporation Ltd. v. Kalavathi, 1988 ACJ 151.

(6) M.D., Thanthai Periyar Transport Corporation Ltd. v. Sundariammal, 1999 (2) CTC 560.

(7).M.D., Annai Sathya Corporation LTD. v. Janardhanan, 2000 (2) CTC 272."

13. In the judgment cited supra, the Hon'ble Division Bench of this Court by relying upon the discussions and observations made by the Hon'ble Supreme Court, has concluded that the under Section 173 of the Motor Vehilces Act, the Court can re-appreciate the whole evidence to decide the matter. Accordingly, enhanced the compensation based on the evidence in the said case. It is also observed by the Hon'ble Division Bench that even in the absence of any Appeal/Cross Appeal by the claimants, the Court can enhance the compensation. By following the decision cited supra and considering the facts and circumstances of the present case on hand, it would be just and proper to enhance the compensation.

14. It is seen from the award that the tribunal has not added future prospects while calculating the loss of income of the deceased. Hence as per the principles laid down by the Hon'ble Supreme Court, the deceased who was a bachelor at the time of the accident and below 40 years of age, 40% of the total income to be added towards future prospects. As per Ex.A6/Legal Heirship Certificate, the 1st claimant/mother of the deceased alone was mentioned as legal heir to the deceased. Though the appellants/claimants 2 &3 , who are the sisters of the deceased, since they got married, they cannot be considered as dependants of the deceased. Therefore, by relying upon Ex.A6/Legal Heirship Certificate, this Court is inclined to modify the deduction towards personal and living expenses made by the tribunal from 1/3 to 50%.

15. Regarding the monthly income fixed at Rs.2000/- by the tribunal, though there were no supportive documents produced for the monthly income for Rs.5,000/- claimed by the claimants, this Court, taking note of the fact that the deceased who was aged 22 years at the time of the accident, could have earned minimum Rs.4000/- per month. Hence it would be appropriate to fix the monthly income at Rs.4000/- and by applying the principles laid down by the Hon'ble Supreme Court in Sarala Varma's Case, this Court modifies the compensation. Taking monthly income at Rs.4000/-, adopting multiplier 18 (as per the age of the deceased), adding 40% towards Future Prospects and deducing 50% towards 'Personal and living expenses' (4000x12x18+40% - 50%),

this court modifies the compensation under head 'Loss of Income' at Rs.6,04,800/- from 2,40,000/-.

16. The tribunal has not awarded any amount under the head 'Loss of Estate", hence by considering the claimants who lost their son and brother, a sum of Rs.15,000/- is granted by this Court under the said head. The compensation of Rs.10,000/- put together under the head funeral expenses, medical expenses, love and affection and transportation expenses is deleted and the same is required to be modified under separate heads. Accordingly, the compensation awarded by the tribunal is modified by this Court under various heads as follows;

Heads	Compensation awarded by the Tribunal Rs.	Compensation modified by this Court Rs.
Loss of Income	2,40,000/-	6,04,800/-
Funeral expenses, medical expenses, love and affection and transportation expenses	10,000/-	...
Loss of Estate	...	15,000/-
Funeral Expenses	...	15,000/-
Loss of Consortium to the mother /1st appellant	..	15,000/-
Loss of Consortium to the sisters / 2nd & 3rd appellants	...	20,000/- (Rs.10,000/- each)
Total	2,50,000/-	6,69,800/-

17. In the result, this Civil Miscellaneous Appeal is allowed and a sum of Rs.2,50,000/- is awarded by the tribunal is enhanced to Rs.6,69,800/-together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay the additional court fee for the enhanced amount of compensation. No costs.

18. The 1st and 2nd respondents are directed to deposit the entire compensation amount modified by this Court along with interest, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit is being made, the appellants/claimants are permitted to withdraw the compensation as modified by this Court as per the apportionment fixed by the tribunal along interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

19. The claimants have preffered this appeal after the delay 1697 days. Though the said delay was earlier condoned by this Court on condition, taking note of the fact that this Court has enhanced the compensation more than the claim, this Court holds that the appellants are not entitled the interest amount for the delay period of 1697 days.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Thiruvallur.

Copy To

The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.R.Neethe Perumal, Advocate, S.R.No.11095
+1cc to M/s.Anand & Surya, Advocate, S.R.No.11388

C.M.A.No.3687 of 2014

SSI(CO)
CS/18/11/2021