

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2021

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A.No. 2009 of 2020

1. B. Devi

2. Minor B. Vijayalakshmi

3. Minor B. Thamizhselvan
(Minors 2&3 are represented by
their Natural Guardian/Next
friend Mother B.Devi

4. P. Malliga

...Appellants/Petitioners

Vs.

1. R. Gunasekaran
(was set exparte in the Trial Court)
(Notice may be dispensed with)

2. The Divisional Manager,
United India Insurance Company Limited,
Motor Third party Claims Office,
Nos. 66,68, Gandhi Road,
Kanchipuram.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.09.2019 made in M.C.O.P.No. 241 of 2014 on the file of the Motor Accident Claims Tribunal Judge, (District & Sessions Judge), Additional District Court(Fast Track Court), Kanchipuram.

For Appellants :Mr.K. Suryanarayanan

For Respondents:Ms.R. Sreevidhya for R2

R1-Set Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 18.09.2019 made in M.C.O.P.No. 241 of 2014 on the file of the Motor Accident Claims Tribunal Judge, (District & Sessions Judge), Additional District Court (Fast Track Court), Kanchipuram.

2.The Appellants are the claimants in M.C.O.P.No. 241 of 2014 on the file of the Motor Accident Claims Tribunal Judge, (District & Sessions Judge), Additional District Court (Fast Track Court), Kanchipuram. The Appellants/Claimants filed the above said claim petition against the Respondents claiming a sum of Rs.20,00,000/- as compensation on account of the death of the deceased who succumbed to injuries in the accident that took place on 08.05.2014. The Appellants are the Legal Heirs of the deceased viz., Wife, Mother and Children of the deceased.

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 TVS Sports Motor Cycle bearing Reg. No. TN-21-AP 7895 belonging to the 1st Respondent and insured with the second respondent and directed the First Respondent to pay a sum of Rs.12,79,600/- as compensation to the Appellants.

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

5.The learned counsel appearing for the Appellants contended that though the Tribunal has rightly held that the accident occurred due to rash and negligent driving by the driver of the motorcycle viz., first respondent, whose vehicle was insured with the Second Respondent ought to have directed the Second Respondent-Insurance Company to pay compensation to the claimants. He further submitted that the compensation awarded under conventional heads are very meagre and the same needs to be enhanced.

6.Per contra, the learned counsel appearing for the 2nd Respondent/Insurance company contended that the Tribunal on considering the fact that the claimants themselves have admitted that the rider of the motorcycle drove the motorcycle in a rash and negligent manner and dashed against the opposite vehicle, had fastened the liability on the First Respondent and therefore the

Second Respondent./Insurance Company need not pay the compensation. He further submitted that the total compensation awarded by the Tribunal is not meagre and the Appellants have 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 2nd Respondent/Insurance company and perused the entire materials on record.

8. Insofar as the fixation of liability is concerned, the Appellants have proved their case through an eyewitness P.W.2. No contra evidence has been produced to prove the contention that the driver and the rider of the motor cycle were under the influence of alcohol. Further, when the First Respondent Vehicle is insured with the Second Respondent and the First Respondent possess the valid driving licence, the Second Respondent cannot be exonerated from liability. As the accident occurred due to rash and negligent driving by the rider of the Motorcycle and the same was admitted by the claimants, this Court is of the view that the Respondents 1 and 2 are liable to pay the compensation and accordingly the Respondents 1 and 2 are jointly and severally liable to pay compensation.

9. Insofar as the monthly income of the deceased is concerned, P.W.1 deposed that the deceased was a Loadman in a lorry in Tasmac Godown, Orikai and was earning a sum of Rs. 12,000/- per month. Since there is no evidence to prove the income of the deceased, the Claims Tribunal on considering the age of the deceased and fixed the notional income at Rs.6,000/- per month which this Court feels is very meagre. Considering the prevailing cost of living as per the decision of the Hon'ble High Court, in the case of Andal Vs Avinav Kannan reported in 2019 (1) TN MAC page .54, is inclined to fix notional income of the deceased at Rs.11,000/- per month and accordingly a sum of Rs.11,000/- is fixed as notional income and by adding future prospects @40% and by deducting 1/4 towards personal expenses, the Loss of income of the deceased is enhanced to Rs. 22,17,600/- (Rs.11,000 x 40/100-1/4).

10. Considering the fact that the Appellants 2 to 4 who are the children and mother of the deceased, have lost the deceased, this Court is of the view that the compensation towards Love and Affection ought to be awarded and Accordingly a sum of Rs. 1,20,000/- is awarded towards Love and Affection.

11. Further, the Claims Tribunal has rightly fixed the compensation towards funeral expenses and Loss of estate at Rs.15,000/- each head respectively and Loss of consortium at Rs. 40,000/- to the wife of the deceased, the First Appellant herein which is reasonable and the same does warrant interference and therefore the same remains unaltered.

12. 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 Income	12,09,600/-	22,17,600/-	Enhanced
2.	Loss of Consortium	40,000/-	40,000/-	Confirmed
3.	Loss of Love and Affection	Nil	1,20,000/-	Granted
4.	Loss of Estate	15,000/-	15,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.12,79,600/-	Rs.24,07,600/-	Enhanced by Rs.11,28,000/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,79,600/- is hereby enhanced to Rs.24,07,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are directed to deposit the entire 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.241 of 2014 on the file of the Motor Accident Claims Tribunal Judge, (District & Sessions Judge), Additional District Court (Fast Track Court), Kanchipuram. On such deposit being made, the Tribunal is directed to transfer the Award amount, as apportioned by the Tribunal directly to the Bank account of the Respondents/Claimants 1 and 4 through RTGS within a period of two weeks thereafter. The shares of the minor respondents/claimants viz., Respondents/Claimants 2 and 3 are directed to be deposited in any one of the Nationalized Banks till they attain majority and the interest accrued thereon shall be withdrawn by the First Respondent/Mother once in three months.

The appellants/claimants 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

//True copy//

Sub Assistant Registrar

(arr)/(shk)

To:

1. The Motor Accident Claims Tribunal Judge,
(District & Sessions Judge),
Additional District Court(Fast Track Court),
Kanchipuram.
2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai 600 104.

+1 CC to Mr.K. Suryanarayanan, Advocate sr 43338

+1 CC to Mr.R.Ravichandran, Advocate sr 43347

C.M.A. No.2009 of 2020

BR(CO)

SP(15/02/2022)