

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

C.M.A.No.3196 of 2012

and

C.M.P.No.280 of 2017

(Through Video Conference)

- 1) Lakshmi
- 2) T.Daniel

... Appellants / Petitioners

Vs.

- 1) V.Rathakrishnan ... (R1 set ex parte Trial Court)
- 2) M/s.Oriental Insurance Co. Ltd.,
C/o Motor Third Party Claims Offices,
No.8, Esplanade, Chennai 600 108

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree made in M.C.O.P.No.639/2003 on the file of Motor Accident Claims Tribunal, II Judge, Small Causes Court at Chennai, dated 10.01.2008.

For Appellants : Mr.T.G.Balachandran

For R-1 : Exparte

For R-2 : Mr.N.Sampath

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the appellants / petitioners seeking for enhancement of compensation awarded by the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai, dated 10.01.2008 in M.C.O.P.No.639/2003.

2. The claimants are the appellants herein.

3. The case of the claimants before the trial Court is as follows:

The accident took place on 18.01.2003, at about 6:30 hrs., wherein the son of the appellants, namely D.Arunkumar, was proceeding towards Cenetoph Road from West to East direction in a motor cycle bearing Registration No.TN 09 H 3819. At that time, near the junction of Chitranjan Road, a tanker lorry bearing Registration No. TN 01 B 7659 was driven rashly and negligently from North to South direction at Chitranjan Salai to Cenetoph Road by the first respondent herein, hit the motor cycle, causing fatal head injury. Since the accident occurred due to the rash and negligent driving of the driver of the tanker lorry, who is also the owner of the vehicle, the driver of the water tanker lorry and the second respondent as Insurer are jointly, severally and vicariously liable to pay compensation to the appellants together with interest. The appellants filed the claim petition in M.C.O.P.No.639 of 2003 claiming compensation of Rs.4,50,000/- for the fatal injuries of their deceased son, viz. D.Arunkumar.

4. Before the Tribunal, the 2nd respondent denied all the averments and allegations in the claim petition, except those that are specifically admitted. The nature and the manner in which the accident occurred was denied as false. The 2nd respondent also had not admitted the age, occupation and income of the deceased.

5. Before the Tribunal, on the side of the claimants, two witnesses were examined as P.W.1 and P.W.2 and nine exhibits were marked as Ex.P1 to Ex.P9. On the side of the respondents, no oral and documentary evidence were adduced.

6. The Tribunal, on considering the pleadings, oral and documentary evidence held that, the accident occurred due to the rash and negligent driving of the driver of the Water lorry (first respondent) and awarded a sum of Rs.2,75,000/- (Rupees Two Lakhs Seventy Five Thousand only) as compensation to the claimants with interest at 7.5% p.a., from the date of petition till the date of realisation and the details are as under:

Sl.No.	Heads	Amount Awarded
1	Loss of Dependency (2000 X 12 X 10)	Rs.2,40,000/-
2	Funeral Expenses	Rs.5,000/-
3	Loss of Love and Affection	Rs.30,000/-
	TOTAL	Rs.2,75,000/-

Not being satisfied with the compensation awarded by the Tribunal, the claimants are before this Court by way of this Appeal.

7.Heard the learned counsel for the parties and perused the

material documents available on record.

8. It is the case of Appellants/Claimants that, the Tribunal erred in considering the age of the mother, being 38 years at the time of the death of her son and had fixed the multiplier at 10, which is very low. The Tribunal failed to consider the working status of the deceased, who was a Karathe Instructor and as such, he would have earned at least Rs.2,000/- per month by doing a private job. It has also failed to see that the deceased had every prospects of income in the near future and as such, ought to have fixed the salary at Rs.4,500/- per month. Further, the Tribunal ought to have granted Rs.25,000/- to each of the appellants towards loss of love and affection as the deceased was their only son.

9. The learned counsel appearing for the appellants also relied upon the following judgments for fixing the multiplier for the age group of 15-20 and 21-25 as '18':

- (i) Srimathi.Sarla Verma & Others - vs. Delhi Transport Corporation and another, reported in 2009 (2) TNMAC SC, dated 15.04.2009;
- (ii) Reshma Kumari and others vs. Madan Mohan and another reported in 2013 ACJ 1253 (SC); and
- (iii) National Insurance Co. Ltd., vs. Pranay Sethi reported in 2017(2) TNMAC 609, dated 31.10.2017.

10. The learned counsel for the appellants while relying on Sarla Verma's case (cited supra), drew the attention of this Court to paragraph No.42, wherein it has been stated that the operative multiplier to be used for the age group of 15 to 20 and 21 to 25 years is "18". Whereas, in the present case on hand, the Tribunal has failed to take into consideration the age of the son of the appellants which was '18' at the time of accident and has wrongly fixed the multiplier at '10'. Therefore, if the age of the son of the appellants is taken into consideration and correct multiplier is applied, then the compensation, under the head "Loss of Dependency" would be (2000 X 12 X 18) Rs.4,32,000/- and therefore, prays for enhancement of the compensation awarded by the Court below.

11. The learned counsel for the 2nd respondent/Insurance Company would submit that the deceased might have also contributed his carelessness and negligence for the happening of the accident and therefore, would state that the learned Judge has fixed a just compensation and prayed for dismissal of the Appeal.

12. Admittedly, the deceased D.Arun Kumar is the sole breadwinner of his family and he died in an accident at the tender age of eighteen. His Transfer Certificate has been

marked as Ex.P5 and Salary Certificate has been marked as Ex.P6. The Tribunal has failed to consider the age of the deceased and the correct multiplier to be adopted in the present case is '18'. Thus, the compensation is arrived at Rs.4,32,000/- (Rupees Four Lakhs Thirty Two Thousand only) by adopting '18' Multiplier (2000 X 12 X 18). With regard to other heads, this Court is not inclined to interfere and the same remains unaltered.

13. In fine, the quantum of compensation awarded by the Tribunal is enhanced to a sum of Rs.4,67,000/- (Rupees Four Lakhs Sixty Seven Thousand only) as follows:-

S.N o	Heads	Amount awarded by Tribunal (Rs)	Amount modified by this Court (Rs.)	Award confirmed / enhanced / unaltered
1.	Loss of Dependency	2,40,000/-	4,32,000/-	Enhanced
2.	Funeral Expenses	5,000/-	5,000/-	Unaltered
3.	Loss of Love and Affection	30,000/-	30,000/-	Unaltered
	Total	2,75,000/-	4,67,000/-	Enhanced

14. Accordingly, the compensation of a sum of Rs.2,75,000/- awarded by the Tribunal is hereby enhanced to a sum of Rs.4,67,000/- (Rupees Four Lakhs Sixty Seven Thousand only), together with interest at the rate of 7.5% per annum from the date of filing the Claim Petition till the date of deposit. The 2nd respondent 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 eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.639 of 2003 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court at Chennai. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the Appellants/Claimant through RTGS, within a period of two weeks thereafter.

15. 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 above Appeal and in case, any order is passed by this Court earlier, depriving interest for the period of delay in question, interest for the

period of delay shall be excluded.

16. In fine, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Motor Accident Claims Tribunal,
II Judge, Small Causes Court, Chennai.
2. M/s.Oriental Insurance Co. Ltd.,
C/o Motor Third Party Claims Offices,
No.8, Esplanade, Chennai 600 108
3. The V.R. Section,
High Court, Madras.

C.M.A.No.3196 of 2012

VG-II (CO)
UMA(20/07/2022)