



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.M.A.No.234 of 2022

1.B.Indira

2.S.Kannan

...Appellants / Petitioners

Vs.

1. B.Babu

2. The New India Assurance Company Limited,
No.223, N.S.C.Bose Road,
Chennai - 600 001.

3. S.Kumar

...Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988 praying to allow the Civil Miscellaneous Appeal by enhancing the compensation awarded in the judgement and decree dated 28.04.2021 passed in M.C.O.P.No.3169 of 2018 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, at Chennai.

For Petitioner : Mr.Amar Dineshbhai Pandiya
For Respondents: R.1 - Not ready in notice
Mr.J.Chandran (for R.2)
R.3 - served - No Appearance

JUDGMENT

The claimants have moved this Court seeking an enhancement of the compensation granted by the Motor Accident Claims Tribunal, Chief Judge, Small causes Court, Chennai in M.C.O.P.No.3169 of 2018. The appeal has been filed under the following circumstances;

2. The mother of the appellants' herein who claims herself to be a proprietor of the grocery shop in the name and style of 'Sakunthala Provision Stores' had sustained fatal injuries in the road accident on 08.02.2018. It is the case of the



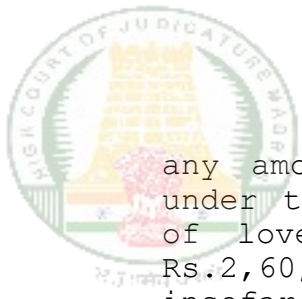
appellants that on the said date at around 07.30 hours, the deceased Sakunthala was riding pillion along with her grand daughter on the motor cycle of her grand daughter bearing Registration No.TN 22 CM 1496 and they were proceeding towards Strahans Road, Pulianthope from West to East direction. While they were so proceeding, the rider of the motor cycle in which the deceased was travelling had to suddenly apply the brake in order to avoid hitting an Auto Rickshaw that came in the opposite direction. By reason of the sudden application of the brakes, the motor cycle had skid and the deceased and her grand daughter were thrown out of motor cycle and sustained grievous injuries. Sakunthala was admitted as impatient in Sundaram Medical Foundation Hospital and despite treatment had succumbed to her injuries on 19.02.2018.

3. The first respondent / the owner of the motor cycle chose to remain exparte. The driver of the bike was impleaded as third respondent. The Insurance Company invoking the Rule under Section 170(b) of the Motor Vehicles Act, had filed their counter contending that the application filed under Section 166 of the Motor Vehicle Act, was not maintainable, since the driver of the motor cycle in which the deceased was travelling was responsible for the accident. They would submit that they are not entitled to compensate the claims since at the time of the accident, the motor cycle was carrying three persons, which was contrary to the terms and conditions of the policy and a clear violation of the rules framed therein. Therefore, they had contended that they are not liable to compensate the death of the said Sakunthala.

4. The learned Chief Judge, Small Causes Court, Chennai by her order dated 28.04.2021 held that the respondent had not been able to prove that the accident had occurred on account of the rash and negligent driving of the driver since the rider of the motor cycle had applied brakes only for the purpose of avoiding collision with the Auto Rickshaw which is coming in the opposite direction.

5. Therefore, the learned Judge had observed that respondents 1 and 2 were liable to pay compensation. However, the learned Judge further observed that the policy covers one pillion rider and the other pillion rider who had filed M.C.O.P.No.3248 of 2018 was yet to get an Award in her petition. Therefore, since one rider was eligible and the case on hand being a fatal one, the second respondent / Insurance Company was bound to compensate the claimants.

6. Considering the age of the deceased i.e., 68 years, and the fact that the petitioner and the third respondent were adults who are living separately, the Tribunal had not awarded



any amount under the loss of dependency but granted amounts under the heads of Funeral Expenses a sum of Rs.15,000/-, loss of love and affection a sum of Rs.60,000/- and a sum of Rs.2,60,000/- towards medical expenses. Challenging the award insofar as no amounts has been granted under the loss of dependency, the claimants have moved before this Court.

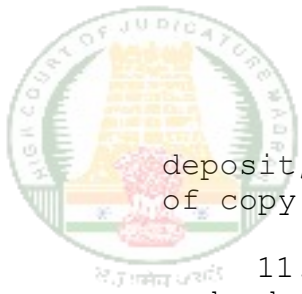
7. As it is a fatal accident, the claimants are entitled to some compensation under the head of loss of dependency. As no proof of income has been produced the notional income can be taken as a sum of Rs.8,000/- and after deducting 1/3rd towards the deceased's personal expenses, the income available to the family would be a sum of Rs.5,334/-. Accordingly, loss of dependency would be as follows : $Rs.5,334 \times 12 \times 5 = Rs.3,20,040/-$. The Tribunal has only awarded a sum of Rs.60,000/- as loss of love and affection (filial consortium), as per the case of National Insurance Company Limited Vs. Pranay Sethi & others reported in (2017) 16 SCC 680 a sum of Rs.40,000/- each has to be awarded to the petitioners. Further no amounts have been granted under the head of loss of estate. Therefore, a sum of Rs.15,000/- should be granted under this head.

8. Consequently, the earlier award and the modified award is tabulated herein below;

S.No	Head	Amount awarded by the Tribunal	Award modified by this Court
1.	Loss of Dependency	-	$Rs.8,000 - 2,666 = Rs.5,334 \times 12 \times 5 = Rs.3,20,040/-$
2.	Loss of Love and Affection to 1st and 2nd appellants	Rs.60,000/-	Rs.80,000/-
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
4.	Loss of Estate	Nil	Rs.15,000/-
5.	Medical Expenses	Rs.2,60,000/-	Rs.2,60,000/-
	Total:	Rs.3,35,000/-	Rs.6,90,040/-

9. The appeal is therefore allowed and the compensation is enhanced from Rs.3,35,000/- to Rs.6,90,040/-.

10. The second respondent / insurance company is directed to deposit the award amount to the credit of M.C.O.P.No.3169 of 2018 on the file of Motor Accidents Claim Tribunal, Chief Judge, Small Causes Court, Chennai along with interest at the rate of 7.5% per annum, from the date of claim petition till the date of



deposit, within a period of four weeks from the date of receipt of copy of this order.

11. The claimants are permitted to withdraw the amount as and when it is deposited, subject to the condition that the appellants pay Court fee for the enhanced amount, if required. It is made clear that the learned Chief Judge, Small Causes Court, Chennai, shall not disburse the amount till such time, as proof of payment of Court fee is provided by the claimants herein.

12. With the above observations, this Civil Miscellaneous Appeal stands allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mrm

To

1. The Chief Judge,
Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.Amar Dineshbhai Pandiya, Advocate, S.R.No.22109
+1cc to Mr.J.Chandran, Advocate, S.R.No.22139

C.M.A.No. 234 of 2022

EV[co]
NSK 09/05/2022