



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:01.02.2022

CORAM:

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THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1142 of 2018
[video conferencing]

1.S.Shanthi
2.S.Mohan Subramaniam
3.Aditya Kiruthika (Minor)
[Minor 3rd appellant represented
by her natural guardian/mother,
1st appellant herein]

...Appellants/claimants

Vs.

1.G.Gopalakrishnan

2.The New India Assurance Co., Ltd.,
No.45, 2nd line Beach,
Moore Street, Chennai - 600 001.
Now at. Bombay Mutual building,
6th Floor, NSC Bose Road,
Chennai - 600 001.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 09.11.2017 made in M.C.O.P.No.5200 of 2011 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

For Appellants : Mr.A.Shanmugaraj
For R1 : Set Ex-parte before the Tribunal
For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed for enhancement of compensation awarded by the Tribunal in the Award dated 09.11.2017 passed in M.C.O.P.No.5200 of 2011, on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

2. Though notice has been served on the 2nd respondent/Insurance Company and name is printed in the cause list, there is no representation either in person or through counsel, even today. Hence, this Court is inclined to pass this Judgment on the merits of the case.

3. The appellants are the claimants in M.C.O.P.No.5200 of



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2011 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai. The appellants have filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Shankar @ Shankareswaran, who died in the accident that took place on 27.07.2010.

4. According to the appellants, on 27.07.2010 at about 8.45 p.m., when the deceased Shankar @ Shankareswaran was driving his two wheeler bearing Registration No.TN 22 AV 0021 along with one Swaminathan as pillion rider, proceeding on GST Road, from Guduvancherry to Pazhavanthangal, and while nearing Meenambakkam over bridge, at that time, the 1st respondent/driver of the van bearing Registration No.TN 57 C 2458 in a negligent manner parking the van in the dark place in over bridge without indication and signal and endangering public safety and consequently, the motor-cycle dashed against the back side of the van. As a result of which, the rider of the two wheeler viz., Shankar was died and the pillion rider viz., Swaminathan was sustained grievous injuries all over the body. Hence, the case.

5. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred due to the rash and negligent driving of the driver of the van belonging to the 1st respondent herein and directed the 2nd respondent/Insurance Company to pay a sum of Rs.8,35,000/- as compensation to the appellants.

6. Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present Civil Miscellaneous Appeal seeking enhancement of compensation.

7. The learned counsel appearing for the claimants submitted that the Tribunal has not considered the evidence of P.W.1, and Exs.P6 to P8 to prove the income of the deceased and also failed to consider that the deceased was a Real Estate Businessman and was earning a sum of Rs.3,00,000/- per annum, and fixed a sum of Rs.6,000/- per month as his income, which is very meager. The Tribunal ought to have fixed a sum of Rs.25,000/- per month as notional income of the deceased. The Tribunal has not awarded any amount towards "loss of love and affection", loss of estate and transportation. The amounts awarded by the Tribunal towards "loss of consortium" and "funeral expenses", are very meagre and thus, the appellants/claimants prayed for enhancement of compensation.

8. Heard the learned counsel appearing for the appellants/claimants and perused the entire materials available on record.

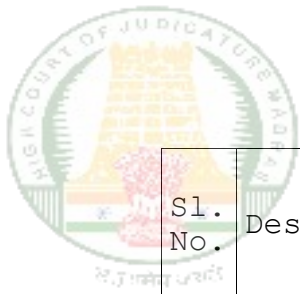


9. From the materials available on record, it is seen that at the time of accident, the deceased was doing Real Estate Business and he was aged about 49 years and was earning a sum of Rs.15,000/- per month. But the Tribunal erroneously fixed the monthly income of the deceased at Rs.6,000/- per month, which is meagre and hence, this Court fixes the monthly income of the deceased at Rs.10,000/-. The Tribunal has calculated future prospects at the rate of 25% which is just and reasonable and hence, the same needs no interference by this Court. Considering the age of the deceased, the Tribunal has rightly applied multiplier '14'. There are three dependants of the deceased and hence, the Tribunal has rightly deducted 1/3th towards personal expenses of the deceased. Therefore, the amount awarded by the Tribunal towards loss of income is modified to Rs.13,00,000/- [Rs.12,500 (Rs.10,000/- + 2,500/- (25% of 10,000) X 12 X 13 X 2/3].

10. Further, the Tribunal has not awarded any compensation towards loss of love and affection and hence this Court is inclined to grant a sum of Rs.40,000/- each under the head of "loss of love and affection." The Tribunal has not granted any compensation towards "loss of estate" and thus this Court grants a sum of Rs.15,000/- towards "loss of estate". The Tribunal has not awarded any compensation towards "transportation" and hence, this Court is inclined to grant a sum of Rs.15,000/- under the head "transportation".

11. It is well settled that the Tribunal and the Courts have to award "just compensation". Though the claimants have claimed lesser compensation, the Courts have power to grant "just compensation" more than the amount claimed by the claimants. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1	Loss of income	Rs.7,80,500/-	Rs.13,00,000/-	Enhanced
2	Loss of consortium	Rs.40,000/-	Rs.40,000/-	Confirmed
3	Loss of love & affection	---	Rs.80,000/-	Granted
4	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed



Sl. No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
5	Loss of Estate	---	Rs.15,000/-	Granted
6	Transportation	---	Rs.15,000/-	Granted
	Total	Rs.8,35,000/-	Rs.14,65,000/-	Enhanced by Rs.6,30,000/-

12. In the result, this Civil Miscellaneous Petition is allowed and the compensation awarded by the Tribunal at Rs.8,35,000/- is hereby enhanced to Rs.14,65,000/- [Rupees Fourteen Lakhs and Sixty Five Thousand only] together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with accrued 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.5200 of 2011 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai. On such deposit, the appellants 1 and 2/claimants are permitted to withdraw their respective shares of the award now determined by this Court, as per the 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 Nationalised Bank till the minor 3rd appellant attains majority. On such deposit, the 1st appellant, being the mother of the minor 3rd appellant, is permitted to withdraw the accrued interest once in three months for the welfare of the minor 3rd appellant. The appellants are directed to pay the necessary Court fee if any, for the enhanced amount of compensation. In other aspects, the Award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To:

1.The IInd Judge,
II Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No.6521

C.M.A.No.1142 of 2018

SPD (CO)
RN (05/04/2022)