

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
AND
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.NO.2312 OF 2021

1. J.Kalaivani
2. J.Jayashree (Minor)
3. J.Yeshwant (Minor)
(Minors rep. by their mother
& Natural Guardian J.Kalaivani)
4. P.Jayabalan
5. J.Mallika

... Appellants/Petitioners

Vs.

1. J.Govindasamy
2. M/s.Reliance General Insurance Co. Ltd.,
6th Floor, 6, Haddows Road,
Nungambakkam, Chennai - 600 034.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.12.2018, made in M.C.O.P. No.4027 of 2013, on the file of the Special Subordinate Judge, No.1, (Motor Accident Claims Tribunal) Small Causes Court, Chennai.

For Appellants : Ms.Ramya V.Rao

For Respondents : Mr.P.Dinesh Kumar for R1
Mr.K.Vinod for R2

J U D G M E N T

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

This appeal has been filed for enhancement of compensation granted by the award dated 04.12.2018, made in M.C.O.P. No.4027 of 2013, on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal) Small Causes Court, Chennai.

2. The appellants-claimants filed M.C.O.P. No.4027 of 2013, on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal) Small Causes Court, Chennai, claiming a sum of Rs.50,00,000/- as compensation for the death of one Jagadeesan, who died in the accident that took place on 09.04.2013.

3. The first respondent, owner of the Lorry, remained exparte before the Tribunal.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Lorry owned by the 1st respondent and directed the 2nd respondent, as insurer of the offending vehicle, to pay a sum of Rs.19,38,600/- as compensation to the appellants at the first instance and recover the same from the 1st respondent, owner of the Lorry, as he has violated the policy conditions.

5. Not being satisfied with the amounts awarded by the Tribunal in the award dated 04.12.2018, made in M.C.O.P. No.4027 of 2013, the appellants have come out with the present appeal.

6. The learned counsel appearing for the appellants contended that at the time of accident, the deceased was aged 29 years and was working as a Mason with Mr.Srinivasa Rao, Civil Engineering Contractor and was earning Rs.750/- per day. The Tribunal, without considering the age and nature of work done by the deceased, erroneously fixed only a meagre sum of Rs.8,000/- per month as notional income of the deceased and awarded compensation towards loss of dependency. The Tribunal failed to award any amount under the head of damages, parental consortium and mental agony. The amounts awarded by the Tribunal towards the other heads are meagre and prayed for enhancement of the compensation.

7. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants did not file any document to prove the avocation and income of the deceased. The Tribunal, in the absence of any documentary evidence to prove the avocation and income of the deceased, fixed a sum of Rs.8,000/- per month as notional income of the deceased, which is not meagre. The Tribunal granted a sum of Rs.1,50,000/- towards Loss of Love and Affection. The said amount awarded by the Tribunal to the appellants is excessive. The compensation awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

9. From the materials on record, it is seen that it is the contention of the appellants that at the time of accident, the deceased was aged 29 years, working as a Mason under one Srinivasa Rao, Civil Engineering Contractor and was earning a sum of Rs.750/- per day. The appellants did not produce any document to prove the avocation and income of the deceased. The Tribunal, in the absence of any evidence with regard to avocation and income of the deceased, fixed a sum of Rs.8,000/- per month as notional income of the deceased. The accident is of the year 2013 and the notional income fixed by the Tribunal is meagre. Considering the age and nature of work done by the deceased, a sum of Rs.11,000/- per month is fixed as notional income of the deceased. The Tribunal, following the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others] and the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another], rightly granted 40% enhancement towards future prospects and applied the correct multiplier '17'. There are four dependents of the deceased and the Tribunal has rightly deducted 1/4th towards personal expenses. Thus, by fixing Rs.11,000/- per month as notional income of the deceased, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.23,56,200/- [Rs.11,000 + 4400 (11,000 x 40%) x 12 x 17 x $\frac{3}{4}$]. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. 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 dependency	17,13,600/-	23,56,200/-	Enhanced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Loss of Love and Affection	1,50,000/-	1,50,000/-	Confirmed
4.	Loss of Estate	15,000/-	15,000/-	Confirmed

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
5.	Transport charges	5,000/-	5,000/-	Confirmed
6.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	19,38,600/-	25,81,200/-	Enhanced by Rs.6,42,600/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.19,38,600/- is enhanced to Rs.25,81,200/- together with interest at the rate of 7.5% per annum from the date of 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 interest and costs, 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.4027 of 2013 at the first instance and recover the same from the first respondent/owner of the vehicle. On such deposit, the appellants 1, 4 and 5 are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minors 2nd and 3rd appellants are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st appellant, mother of the minors 2nd and 3rd appellants is permitted to withdraw the accrued interest, once in three months for the welfare of the minors 2nd and 3rd appellants. The appellants are directed to pay the necessary court fee, if any, on the enhanced award amount. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Special Subordinate Judge, No.1,
(Motor Accident Claims Tribunal),
Small Causes Court, Chennai.

Copy To

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

+2ccs to M/s.Ramya V.Rao, Advocate, S.R.No.35577

+1cc to M/s.D.Ravichander, Advocate, S.R.No.35272

+1cc to M/s.Elveera Ravindran, Advocate, S.R.No.34736

C.M.A.No.2312 of 2021

AJS (CO)
RLP (26/07/2022)