



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.40 of 2016

- 1.K.Boomadevi
- 2.Minor K.Maheswaran
- 3.Minor K.Priyanka
- 4.Minor K.Prabhaharan
- 5.Minor K.Kodeeshwarn

(All the above minor appellants 2 to 5
are rep.by their mother K.Boomadevi,
1st appellant herein)

- 6.Mariyayee
- 7.Ramasamy

... Appellant /Petitioners

Vs.

1. S.Selvakumar
2. The Branch Manager,
The Oriental Insurance Co.Ltd.,
R.V.K.Building 1st Floor,
No.24, Dhali road,
Udumalpet-642 126.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 16.03.2015 in M.C.O.P.No.69 of 2013 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Kulithalai.

For Appellant : Mr.N.Sudhagar Nagaraj

For Respondents : Mr.S.Gokulraj
for R.1
: Mr.C.Jawahar Ravindran
for R.2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants against the Judgment and decree dated 16.03.2015 in M.C.O.P.No.69 of 2013 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Kulithalai, seeking enhancement of compensation.



2. The brief facts of the case are as follows:

It is a case of fatal accident took place on 12.03.2013 at about 04.00p.m., in Palayam - Trichy main road near Veralipatty pirivu road. While the deceased was travelling as a pillion rider in a two wheeler bearing Registration No.TN-45-AW-2790, a car owned by the first respondent which was insured with the second respondent Insurance Company came in a rash and negligent manner and dashed against the two wheeler. Due to the said impact, the deceased sustained multiple grievous injuries in his head and all over his body and immediately, he was taken to the hospital and he succumbed to the injuries. The deceased was aged about 36 years at the time of accident and he was earning a sum of Rs.10,000/- per month by working as a mason. Therefore, the legal heirs of the deceased filed a petition in M.C.O.P.No.69 of 2013, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Kulithalai, seeking a sum of Rs.15,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimant, three witnesses viz., P.Ws.1to 3 were examined and 11 documents viz., Exs.P.1 to P.11 were marked and on the side of the respondents, neither any witness was examined and nor any document was marked.

4.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel appearing on either side and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the offending vehicle and directed the Insurance Company to pay a sum of Rs.10,19,000/-, as compensation under the following heads:

for loss of income	= Rs.8,64,000/-
for loss of consortium	= Rs. 30,000/-
for loss of love and affection (each Rs.20,000/- to the claimants 2 to 5)	= Rs. 80,000/-
for loss of love and affection (each Rs.10,000/- to the claimants 6 and 7)	= Rs. 20,000/-
for funeral expenses	= Rs. 25,000/-

Total	= Rs.10,19,000/-

5. Against which, the appellants/claimants have filed this present appeal seeking enhancement of compensation.

6. The learned Counsel for the appellants would submit that <https://hccse.courts.gov.in/hccse/> loss of income, the Tribunal has not taken 50% of the monthly income of the deceased for future prospects and hence, the amount awarded under the head of loss of income should be



modified. He further submitted that the amount awarded by the Tribunal under the various heads also very meagre. Hence, he prays this Court for enhancing the compensation.

7. The learned counsel for the respondents would submit that based on the available oral and documentary evidences, the Tribunal has arrived at just and proper compensation under various heads. Hence, he prays for dismissal of this appeal.

8. Heard the learned counsel appearing on both sides and perused the materials available on record.

9. As contended by the learned Counsel for the appellants/claimants, since the Tribunal has not taken into account the future prospects for arriving at loss of income, this Court is inclined to add 50% of the monthly income of the deceased for arriving loss of income. If that being so, the loss of income would be arrived at Rs.12,96,000/- {(Rs.6,000/- +Rs.3000/-)-1800x12x15}(1/5th of the income ie. Rs.18000/- deducted personal expenses). The amount awarded by the Tribunal under other heads stand unaltered. Therefore, this Court enhanced the compensation from Rs.10,19,000/- to Rs. 14,51,000/- under the following heads:

for loss of income	= Rs.12,96,000/-
for loss of consortium	= Rs. 30,000/-
for loss of love and affection (each Rs.20,000/- to the claimants 2 to 5)	= Rs. 80,000/-
for loss of love and affection (each Rs.10,000/- to the claimants 6 and 7)	= Rs. 20,000/-
for funeral expenses	= Rs. 25,000/-

Total	= Rs. 14,51,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the compensation awarded by the Tribunal in M.C.O.P.No.69 of 2013, dated 16.03.2015, from Rs.10,19,000/- to Rs.14,51,000/-(Rupees Fourteen Lakhs Fifty One Thousand Only) with 7.5% interest per annum. The second respondent Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and less the amount already deposited and on such deposit being made the appellants/claimants are permitted to withdraw entire award amount with accrued interests and costs as apportioned by the Tribunal, without filing any formal petition before the Tribunal and insofar as the shares of the minors 2 to 5 are concerned, the



same should be deposited in any one of the Nationalised Bank in a fixed deposit under renewable scheme till they attain majority and the interest accrued on their shares shall be withdrawn by their mother/guardian/first appellant shall be directly withdrawn from the Bank once in six months. No Costs.

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Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal/Subordinate Court,
Kulithalai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.N.Sudhagar Nagaraj, Advocate Sr.No.71969
+1cc to Mr.S.Gokulraj, Advocate Sr.No.71900
+1cc to Mr.C.Jawahar Ravindran, Advocate Sr.No.72113

SSL

VB/GT/SAR2/12/09/2017/4P/6C

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