



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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C.M.A (MD) .No.222 of 2016

and

C.M.P. (MD) No.7911 of 2017

1. Santha
2. Ganesan
3. Selvi
4. Vembu

... Appellants / Petitioners

Vs.

1. M/s.Adayar Anand Bhavan Sweets and Snacks
No.296, Omalur Main Road,
Salem District-636 009.

2. The Divisional Manager,
M/s.United India Insurance Company Ltd.,
Division-1, No.4, Promenade Road,
Cantonment,
Trichy-1.

... Respondents / Respondents

(The 1st respondent has been set ex-parte
before the Tribunal. Hence, the 1st respondent
may be dispensed with in this case)

PRAYER :- Civil Miscellaneous Appeal filed Under Section 173 of Motor Vehicle Act, against the judgment and decree dated 11.02.2015 in M.C.O.P.No.4832 of 2013 on the file of the Motor Accidents Claims Tribunal / Special District Court, Trichirappalli and seeking enhancement of compensation from a sum of Rs.10,00,000/-.

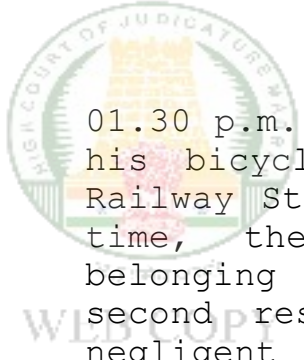
For Appellants : Mr.N.Sudhagar Nagaraj
For Respondents : Mr.N.Dilip Kumar
for R.2

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 11.02.2015 in M.C.O.P.No.4832 of 2013 on the file of the Motor Accidents Claims Tribunal / Special District Court, Trichirappalli, seeking enhancement of compensation.

<https://hcservices.ecourts.gov.in/hcservices/>

2. It is a case of fatal accident took place on 04.06.2013 at



01.30 p.m. After completing his work, when the deceased was riding his bicycle near Trichy-Karur Main Road, opposite to Elamanur Railway Station west to east direction on the left side, at that time, the Eicher Van bearing Registration No.TN-30-AF-4599 belonging to the first respondent, which was insured with the second respondent / Insurance Company, came in a rash and negligent manner and dashed against the bicycle and due to the said accident, the petitioner sustained grievous injury in the head. Immediately after the accident, the said injured was admitted at the Government Head Quarters Hospital, Trichy, as an inpatient from 04.06.2013 to 06.06.2013 and inspite of treatment, he died. Hence, the legal representatives of the deceased filed an application in M.C.O.P.No.4832 of 2013, dated 11.02.2015, on the file of the Motor Accidents Claims Tribunal / Special District Court, Trichirappalli seeking compensation of Rs.10,00,000/-.

3. Before the Tribunal, on the side of the claimants, one witness viz., P.W.1 was examined and seven documents viz., Exs.P.1 to P.7 were marked and on the side of the respondents, neither any witness was examined nor any document was marked.

4.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants 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 second respondent Insurance Company to pay a sum of Rs.1,80,000/- to the claimants.

5. Against which, the appellants/claimants filed the present appeal for enhancement of compensation.

6. The learned counsel appearing for the appellants/ claimants would submit that the Tribunal has deducted 1/3rd of the monthly income towards his personal expenses, instead 1/4th of the monthly income, by considering the total number of family members. In addition to that, the amounts awarded under other heads are also very meagre. Hence, he prays for enhancement of compensation.

7. The learned Counsel for the second respondent Insurance Company would submit that based on the oral and documentary evidences, the Tribunal has correctly come to the conclusion and awarded just and reasonable compensation and hence, the award passed by the Tribunal deserves no interference and hence, this appeal has to be dismissed.

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

<https://hcservices.ecourts.gov.in/hcservices/>

9. A perusal of the award passed by the Tribunal, it is seen that the Tribunal has deducted 1/3rd of the monthly income while



arriving at loss of income, which is not correct. By considering the total number of family members, it would be just and reasonable, if $1/4^{\text{th}}$ of the family income is deducted. Accordingly, the loss of income is arrived at as follows:

Rs.3,000/- x $3/4 \times 12 \times 5$ = Rs.1,35,000/-

The Tribunal has awarded a sum of Rs.10,000/- towards loss of consortium to the first petitioner, which is in the considered opinion of this Court, very meagre and hence, by considering the mental agony and the sufferings undergone by the first petitioner due to the death of her husband, this Court is inclined to enhance the same from Rs.10,000/- to Rs.50,000/-. The Tribunal has also granted a sum of Rs.40,000/- towards loss of love and affection for the petitioners 2 to 4, which is very meagre and hence, the same is enhanced to a sum of Rs.1,00,000/-. The Tribunal has also awarded a sum of Rs.10,000/- towards funeral expenses and transportation charges, which is just and reasonable and hence, the same is hereby confirmed.

10. In view of the above, this Court modifies the award of the Tribunal by enhancing the compensation as under:

S.No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	For loss of income	1,20,000	1,35,000	enhanced
2	For loss of love and affection	40,000	1,00,000	enhanced
3	For loss of consortium	10,000	50,000	enhanced
2	For transportation and funeral expenses	10,000	10,000	confirmed
	Total	1,80,000	2,95,000	By enhancing a sum of Rs.1,15,000

11. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the compensation from Rs.1,80,000/- to Rs.2,95,000/-, dated 11.02.2015, passed in M.C.O.P.No.4832 of 2013 on the file of the Motor Accidents Claims Tribunal / Special District Court, Trichirappalli. 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 on such deposit being made, the claimants are



permitted to withdraw the entire award amount, with accrued interests and costs as apportioned by the Tribunal, without filing any formal petition before the Tribunal. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

The Special District Judge,
Motor Accidents Claims Tribunal,
Trichirappalli.

+ 1 CC TO MR.N.Sudhagar Nagaraj, ADVOCATE IN SR No.77514

+ 1 CC TO MR.N.Dilip Kumar, ADVOCATE IN SR No.77406

ssl/rmk

MK/KK/SAR-1/06.10.2017/4P/4C

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