



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.528 of 2013

1.G.Bhagavathi
2.Minor.M.B.Haritha
3.G.Krishnammal ... Petitioners/Appellants

Vs.

1.C.Thanabalan

2.Royal Sundaram Alliance
Insurance Company Ltd.,
21, Pattullos Road,
Chennai.

3.V.Ravi Chandran

4.United India Insurance Co.Ltd., ...Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree made in M.C.O.P.No.231 of 2011, dated 06.02.2012, on the file of the Motor Accident Claims Tribunal Additional District Court / Fast Track Court No.1, Thoothukudi.

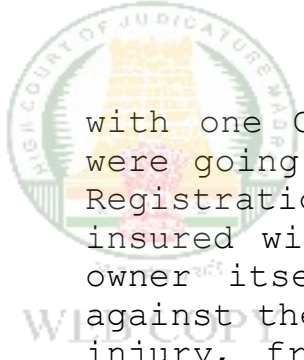
For Appellants :Mr.S.Siva Thilakar
For Respondents :S.Srinivasa Raghavan for R2
:Mr.A.S.Mathialagan for R4
:No Appearance for R1 & R3

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants against the award and decree made in M.C.O.P.No.231 of 2011, dated 06.02.2012, on the file of the Motor Accident Claims Tribunal Additional District Court / Fast Track Court No.1, Thoothukudi, seeking enhancement of compensation.

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

It is a case of fatal accident took place on 09.05.2011 at about 14.30 hours, when the deceased was riding the third respondent's motor bike bearing Registration No.TN-04-U-9383 along



with one Chokkalingam, who was the pillion rider, and when they were going in the Thoothukudi-Tiruchendur main road, a car bearing Registration No.TN-69-AA-2106, owned by the first respondent and insured with the second respondent, which was also driven by its owner itself, came in a rash and negligent manner and dashed against the two wheeler. As a result, the deceased sustained head injury, fracture in the skull and occipital region and multiple injuries all over the body and died on the spot. At the time of accident, the deceased was aged about 31 years and was working as Assistant Custom House Agent and earned a sum of Rs.12,200/- per month. The petitioners who are the legal heirs of the deceased filed a petition in M.C.O.P.No.231 of 2011, before the Motor Accident Claims Tribunal Additional District Court / Fast Track Court No.1, Thoothukudi, claiming a sum of Rs.35,00,000/- as compensation.

2. Before the Tribunal, on the side of the claimants, three witnesses viz., P.Ws.1 to 3 were examined and thirteen documents viz., Exs.P.1 to P.13 were marked and on the side of the respondents, neither any witness was examined nor any document was marked.

3.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 second Insurance Company to pay a sum of Rs.5,23,500/-, as compensation.

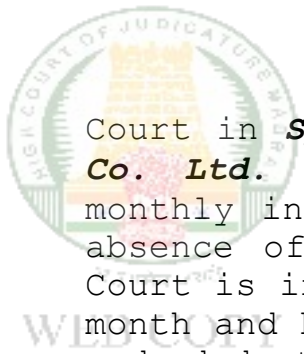
4. Against which, the appellants/claimants filed this Civil Miscellaneous Appeal seeking enhancement of compensation.

5. The learned Counsel for the appellants would submit that though the claimants have filed the salary certificate of the deceased, since it has not been proved, the tribunal has taken only a sum of Rs.3,500/- as monthly salary of the deceased and arrived a meagre amount towards loss of income and the amounts awarded under other heads are also very meagre. Hence, he seeks interference of this Court to the award passed by the Tribunal.

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

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

<https://hcservices.courts.gov.in/hcservices> 8. As rightly contended by the learned Counsel for the appellants/claimants, the Tribunal has committed an error in fixing the monthly income of the deceased. The Honourable Apex



Court in **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.** reported in **2014 (1) TNMAC 459 (SC)**, determined the monthly income at Rs.6,500/- for a vegetable vendor, even in the absence of any definite material about the income. Hence, this Court is inclined to enhance the monthly income as Rs.6,500/- per month and by adding 50% of the monthly income for future prospects and deducted 1/3rd towards personal expenses of the deceased, arrived the loss of income as follows:

Rs.6500/-+3250x12x17x2/3=Rs.13,26,000/-

As far as the others heads are concerned, the Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses, which is in the considered opinion of this Court is very lesser amount and hence, this Court is inclined to enhance the same to a sum of Rs.10,000/-. The Tribunal has awarded a sum of Rs.20,000/- towards loss of consortium to the wife of the deceased. Considering the age of the wife of the deceased and the considering her pathetic condition, this Court is inclined to enhance the same to a sum of Rs.1,00,000/-. Further the amount of Rs.20,000/- granted by the Tribunal towards loss of love and affection is very meagre. By considering the sufferings undergone by the claimants due to the loss of love and affection from the deceased, this Court is inclined to enhance the same to a sum of Rs.1,00,000/-. The amount awarded by the Tribunal towards loss of estate is hereby confirmed. In view of the above, this Court is inclined to enhance the compensation from Rs.5,23,500/- to a sum of Rs.15,38,500/- as follows:

for loss of income	= Rs.13,26,000/-
for funeral expenses	= Rs. 10,000/-
for loss of estate	= Rs. 2,500/-
for loss of consortium	= Rs. 1,00,000/-
for loss of love and affection	Rs. 1,00,000/-

Total	Rs. 15,38,500/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the compensation awarded by the Tribunal in M.C.O.P.No.231 of 2011, dated 06.02.2012, from Rs.5,23,500/- to a sum of Rs.15,38,500/- (Rupees Fifteen Lakhs Thirty Eight Thousand and Five Hundred only) with 7.5% 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, less the amount already deposited if any and on such deposit being made, the appellants/major 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. Insofar as the minor share is concerned, the same should be deposited in any one of the Nationalised Bank in a fixed deposit under renewable scheme till she attained majority and the interest accrued on her share shall be directly withdrawn by her



mother/natural guardian/first appellant from the Bank once in three months. No costs.

Sd/-

Assistant Registrar (CS-I)

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/True Copy/

Sub Assistant Registrar

To

The Judge, Additional District Court/Fast Track Court No.1,
Motor Accident Claims Tribunal Thoothukudi.

COPY TO:

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.S.SIVATHILAKAR, Advocate SR.No.69505
+1cc to M/S.S.SRINIVASA RAGHAVAN, Advocate SR.No.69268
+1cc to M/S.A.S.MATHIALAGAN, Advocate SR.No.69139

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MAS/JC/SAR2:11.09.2017:4P-6C

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