

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2264 of 2015 & 1743 of 2016

C.M.A.No.2264 of 2015

1.M.Bhavani

2.Minor.M.Praveen Kumar

3.Minor M.Prasannan Kumar

4.C.Patturajamma

(Minor petitioners 2 & 3 represented
by their mother and

natural guardian 1st petitioner) ...Appellants/Petitioners

Vs.

1.K.E.Balaji

2.The Divisional Manager,
United India Insurance company Limited.,
Third Party Claim Office,
No.66, 68 Gandhi Road,
Kanchipuram.

(1st respondent was set exparte

before the Court below. Hence notice
may be dispensed with)

...Respondents/Respondents

Prayer in C.M.A.No.2264 of 2015: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 06.08.2014 made in M.C.O.P.No.323 of 2011 on the file of the Motor Accidents Claims Tribunal, (District Court-II), Kanchipuram.

For Appellant : Mr.C.Prabakaran

For R1 : set exparte vide in EB

For R2 : Mr.P.Sankaranarayanan

C.M.A.No.1743 of 2016

The Divisional Manager,
United India Insurance company Limited.,
Third Party Claim Office,
No.66, 68 Gandhi Road,
Kanchipuram.

Now at United India Insurance Company Limited
Motor Third Party Service Hub
AR Plaza, 35-37, 45 feet road Extension
Balaji nagar, Saram
Puducherry-605 011.

...Appellant/2nd Respondent

vs.

1.M.Bhavani
2.Minor.M.Praveen Kumar
3.Minor M.Prasannan Kumar

4.C.Patturajamma
(Minor petitioners 2 & 3 represented
by their mother and
natural guardian 1st petitioner)

..Respondent/Petitioners
1 to 4

5.K.E.Balaji

... 5th Respondent/1st Respondent

Prayer in C.M.A.No.1743 of 2016: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.08.2014 made in M.C.O.P.No.323 of 2011 on the file of the Motor Accidents Claims Tribunal, (District Court-II), Kanchipuram.

For Appellant : Mr.P.Sankaranarayanan

For RR1 & 4 : Mr.C.Prabakaran

For RR2 & 3 : Minor rep by R1

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C O M M O N J U D G M E N T

C.M.A.No.2264 of 2015 is filed by the claimants for enhancement of compensation granted by the award dated 06.08.2014 made in M.C.O.P.No.323 of 2011 on the file of the Motor Accidents Claims Tribunal, (District Court-II), Kanchipuram.

C.M.A.No.1743 of 2016 is filed by the Insurance Company against the judgment and decree dated 06.08.2014 made in M.C.O.P.No.323 of 2011 on the file of the Motor Accidents Claims Tribunal, (District Court-II), Kanchipuram.

2.Both the appeals are arising out of the same accident and hence, they are disposed of by this common judgment.

3.Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

4.The appellants in C.M.A.No.2264 of 2015 are the claimants and respondents are the respondents in M.C.O.P.No.323 of 2011 on the file of the Motor Accidents Claims Tribunal, (District Court-II), Kanchipuram. The claimants filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one C.Manivannan, who died in the accident that took place on 04.11.2011.

5.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the first respondent and as insurer of the first respondent, second respondent/Insurance Company is liable to pay compensation and awarded a sum of Rs.18,70,600/- as compensation to the claimants.

6.Aggrieved against the said award dated 06.08.2014 made in M.C.O.P.No.323 of 2011, the claimants have come out with C.M.A.No.2264 of 2015 seeking enhancement of compensation and the second respondent/Insurance Company has come out with C.M.A.No.1743 of 2016 challenging the quantum of compensation awarded by the Tribunal.

7.The learned counsel appearing for the claimants contended that the deceased Manivannan was working as Junior Assistant in Government Elementary School Education Department and was earning a sum of Rs.15,436/- per month. But the Tribunal has erroneously fixed the income of the deceased at Rs.13,281/-. The claimants are four persons and the Tribunal has erroneously deducted 1/3rd instead of 1/4th towards personal expenses of the deceased. The amounts awarded under different heads are meagre and hence prayed for enhancement of compensation.

8.The learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal erroneously fixed the monthly income of the deceased at Rs.13,281/- and added 30% towards future prospects. The

deceased was a Government servant, who would have retired at the age of 58 and the Tribunal ought to have applied a split multiplier of 8+5. Therefore, he prayed for dismissal of the appeal filed by the claimants and setting aside the award passed by the Tribunal.

9. Heard the learned counsel appearing for the claimants as well as the second respondent/Insurance Company and perused the materials available on record.

10. From the materials available on record, it is seen that the claimants have marked appointment order of the deceased and his salary certificate as Exs.P17 and P18. As per the documents filed by the claimants, the deceased was earning a sum of Rs.15,436/- per month at the time of accident. The Tribunal without any reason fixed monthly income of the deceased at Rs.13,281/-. Further, the Tribunal failed to consider that four claimants have claimed compensation for the death of the deceased and ought to have deducted 1/4th instead of 1/3rd. The contention of the learned counsel for the second respondent/Insurance Company that the Tribunal has erred in taking into account a sum of Rs.13,281/- as monthly income of the deceased and adding 30% enhancement for future prospects, is without merits.

11. It is well settled that gross income of the deceased has to be taken into account for calculating the loss of income to the claimants. The Tribunal considering Exs.P11, P16/service register of the deceased and Ex.P14/driving license, has fixed the age of the deceased as 50 years. As per the judgment of the Honourable Apex Court reported in 2017(2) TN MAC 609(SC) (National Insurance Company Limited versus Pranay Sethi), 30% enhancement has to be granted for future prospects. The same is proper and there is no error warranting interference by this Court. The contention of the learned counsel for the second respondent/Insurance Company that the Tribunal ought to have applied split multiplier has no substance in the facts and circumstances of the case. The Court has to consider all the facts and circumstances of the case and decide whether to apply split multiplier or multiplier applicable to the age of the deceased. In the present case, the claimants are entitled to compensation by applying multiplier 13, as the deceased had eight years of service and would have got more enhancement than 30% enhancement added towards future prospects. In view of the above, the loss of income is modified as follows:

(Rs.15,436+30% of 15,436) X 12 X 13 X 3/4=23,47,815.60/-
(Rounded to Rs.23,47,816/-)

A sum of Rs.20,000/- awarded by the Tribunal towards loss of consortium is hereby enhanced to Rs.40,000/-. Further, a sum of

Rs.5,000/- awarded by the Tribunal towards funeral expenses is hereby enhanced to Rs.15,000/-. As per the judgment of the Hon'ble Apex Court, the claimants are entitled only Rs.70,000/- under the conventional heads. In view of the same, the total sum of Rs.50,000/- awarded by the Tribunal towards loss of love and affection to the claimants 2 and 4 are hereby set aside. The Tribunal has not granted any amount for loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. 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 income	17,95,591	23,47,816	enhanced
2.	Funeral expenses	5,000	15,000	enhanced
3.	Loss of consortium	20,000	40,000	enhanced
4.	Loss of love and affection to claimants 2 to 4	50,000	-	set aside
5.	Loss of estate	-	15,000	awarded
	Total	18,70,591 rounded to 18,70,600	24,17,816	Enhanced by Rs.5,47,216 /-

12. In the result, both the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.18,70,600/- is hereby enhanced to Rs.24,17,816/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the enhanced award amount with interest now determined by this Court, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1 to 3 are entitled to a sum of Rs.7,60,000/- each and 4th claimant is entitled to a sum of Rs.1,37,816/-. The first and fourth claimants are permitted to withdraw their share with accrued interest on the basis of the apportionment fixed by this Court, after adjusting the

amount, if any, already withdrawn. The claimants 2 and 3 are minors and their respective shares are ordered to be deposited in any one of the nationalised Bank until they attain majority. The first claimant/mother of the claimants 2 and 3 is permitted to withdraw the accrued interest once in three months. No costs.

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Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Judge,
The Motor Accidents Claims Tribunal,
(District Court-II),
Kanchipuram.

Copy to:-

2. The Record Keeper,
V.R. Section,
High Court,
Madras.

+1cc to Mr.P.Sanakara Narayanan, Advocate, SR.No.78400

+2cc to Mr.C.Prabakaran, Advocate, SR.No. 77932 & 77933

C.M.A.No.2264 of 2015
and
C.M.A.No.1743 of 2016

VGI (CO)
Kak(02/05/2019)

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