

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.2550 of 2018

1.Pavithra

2.Minor. Gaja Priya

(Minor petitioner is represented by
her mother/guardian 1st appellant)

... Appellants/Claimants

Vs.

1. Deenadayalan

2. United India Insurance Co., Ltd.,
Rep. By its Divisional Manager,
3rd Party Claims HUB, 2nd Floor,
No.81, Katpadi Road,
Vellore 4.

... Respondents/Respondents

(No relief sought against the 1st respondent.
Hence, notice may be dispensed with)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 31.08.2017 made in M.C.O.P.No.889 of 2014 on the file of the I Additional District and Sessions Judge, (Motor Accident Claims Tribunal), Vellore.

For Appellants : Mr.C.Prabakaran

For R2 : Mr.D.Baskaran

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 31.08.2017, made in M.C.O.P.No.889 of 2014 on the file of the I Additional District and Sessions Judge, (Motor Accident Claims Tribunal), Vellore.

2.By consent, the appeal is taken up for final disposal at the admission stage itself.

3.The appellants are the claimants in M.C.O.P.No.889 of 2014 on the file of the I Additional District and Sessions Judge, (Motor Accident Claims Tribunal), Vellore. They filed the above claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Duraisamy, husband of the 1st appellant and father of the 2nd appellant, who died in an accident that took place on 01.05.2014.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the vehicle belonging to the 1st respondent and directed the 2nd respondent to deposit the entire award amount of Rs.9,68,750/- to the appellants.

5.Not being satisfied with the compensation awarded by the Tribunal, the appellants have come out with this appeal, seeking enhancement.

6.The learned counsel appearing for the appellants contended that the deceased was a retail textile merchant earning Rs.18,000/- per month. The Tribunal fixed the notional income of the deceased at Rs.6,500/- per month and the same is very low. The amounts awarded by the Tribunal towards loss of love and affection and loss of consortium are very low and the same has to be enhanced.

7.Per contra, Mr.D.Baskaran, learned counsel taking notice for the 2nd respondent contended that the appellants have not produced any document to substantiate their contention that the deceased was earning Rs.18,000/- per month. The notional income fixed by the Tribunal is reasonable. The Tribunal has granted excessive amounts towards future prospects, loss of consortium and loss of love and affection, which have to be reduced.

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

9.The appellants have pleaded and let in oral evidence to the effect that the deceased was a retail textile merchant earning Rs.18,000/- per month. In the absence of any document, the Tribunal fixed the notional income of the deceased at Rs.6,500/- per month. The accident took place on 01.05.2014. Considering the age of the deceased, I hold that the notional income fixed by the Tribunal is very low and hence, the same is enhanced to Rs.9,000/- per month. The Tribunal has awarded 30% enhancement for future prospects. As per the judgment of the

Hon'ble Supreme Court in National Insurance Company Ltd., v. Pranay Sethi and others reported in 2017(2)TNMAC 609 (SC), the appellants are entitled to only 25% for future prospects. Thus, the amounts awarded under the head of loss of income is modified as follows:

$$\text{Rs.9,000} + (25\% \text{ of Rs.9,000}) \times 12 \times 13 \times 2/3 = \text{Rs.11,70,000/-}$$

10.The Tribunal has awarded a sum of Rs.50,000/- towards loss of consortium, Rs.25,000/- towards loss of love and affection and Rs.15,000/- towards funeral of expenses. The Tribunal has not awarded any amounts for loss of estate. The amount awarded under the head of loss of consortium is reduced to Rs.40,000/-. A sum of Rs.15,000/- is granted towards loss of estate. The amount granted under other heads are 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 income	8,78,750/-	11,70,000/-	enhanced
2.	Loss of consortium	50,000/-	40,000/-	reduced
3.	Loss of love and affection	25,000/-	25,000/-	confirmed
4.	Funeral expenses	15,000/-	15,000/-	confirmed
5.	Loss of estate	-	15,000/-	granted
	Total	9,68,750/-	12,65,000/-	Enhanced by Rs.2,96,250/-

11.The 2nd respondent-Insurance Company is directed to deposit the compensation of a sum of Rs.12,65,000/-, less the amount already deposited, if any, along with accrued interest and costs to the credit of M.C.O.P.No.889 of 2014, on the file of the I Additional District and Sessions Judge, (Motor Accident Claims Tribunal), Vellore, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the first claimant/first appellant is permitted to withdraw her share amount, as per the ratio of apportionment fixed by the Tribunal, with accrued interest and costs, by making necessary application before the Tribunal. The share of the minor second claimant is directed to be deposited in any one of the Nationalized Bank, till she attains majority. The first claimant/first appellant is permitted to withdraw interest once

in three months, directly from the Bank. It is made clear that the claimants/appellants are not entitled to any interest for the delay period in filing the appeal.

12.In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the amount awarded by the Tribunal from Rs.9,68,750/- to Rs.12,65,000/-. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The I Additional District and Sessions Judge,
(Motor Accident Claims Tribunal), Vellore.

+1cc to Mr.D.Baskaran, Advocate, S.R.No.78370

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.78621

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SSI(CO)
CS/05/03/2019



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