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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.08.2017

DELIVERED ON: 16.02.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.446 of 2014

1.Tmt.Lingeshwari
2.R.Suma
3.R.Venkateshbabu

... Appellants / Petitioners

Vs.

1. Kandasamy

2. The Divisional Manager,
M/s.Oriental Insurance Co. Ltd.,
D.O.No.1, Bangur Dharmasala Building,
3rd Floor, 6A, West Veli Street,
Madurai - 625 001.

... Respondents 1 & 2/
Respondents 1 and 2

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 05.10.2013 made in M.C.O.P.No.1024 of 2011 on the file of the Motor Accident Claims Tribunal, V Additional District Judge, Madurai and praying to set aside the same.

For Appellants : Mr.J.Ramamoorthy

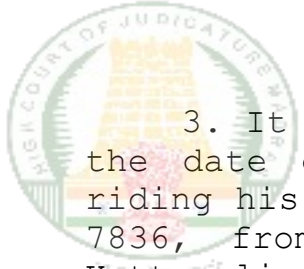
For R-1 : No Appearance

For R-2 : Mr.K.Bhaskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants against the award, dated 05.10.2013 made in M.C.O.P.No.1024 of 2011 on the file of the Motor Accident Claims Tribunal, V Additional District Judge, Madurai.

2. It is a case of fatal accident, which took place on 17.04.2011 at about 17.30 hours at Madurai-Dindigul Four Way Road, near Kattapuli Nagar, Samayanallur, Madurai District.



3. It is the case of the claimants before the Tribunal that on the date of accident, when the deceased by name Ranjitham was riding his Hero Honda Motor Cycle bearing Registration No.TN 59 AQ 7836, from West-East in Madurai-Dindigul Four Way Road, near Kattapuli Nagar Bridge, Samayanallur, the first respondent drove his Honda City Car bearing Registration No.TN 59 AA 6666 from west to east in Madurai - Dindigul Four Way Road in a rash and negligent manner, without sounding horn and dashed behind the motorcycle and as a result, the said Ranjitham was thrown away and sustained multiple grievous injuries and thereafter, succumbed to the injuries.

4.The claimants filed an application in M.C.O.P.No.1024 of 2011 on the file of the Motor Accident Claims Tribunal, V Additional District Judge, Madurai., seeking compensation.

5. Before the Tribunal, the claimants examined three witnesses as P.Ws.1 to 3 and marked eleven documents as Ex.P.1 to Ex.P.11. On the side of the respondents, one witness was examined as R.W.1 and three documents were marked as Ex.R1 to R3.

6.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments advanced on either side and also appreciating the evidences on record, held that the accident occurred only due to the rash and negligent driving of the driver of the car, belonging to the first respondent and insured with the second respondent and therefore, directed the second respondent to pay compensation of Rs.10,77,420/-, to the claimants.

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

8. The learned counsel for the appellant/claimants would submit that without considering the age and avocation and dependency of the claimants over the deceased, the Tribunal awarded only a meagre sum in all heads and therefore, the compensation awarded by the Tribunal is to be enhanced.

9. The learned counsel for the second respondent/Insurance Company submitted that based on the evidence, the Tribunal awarded a just and reasonable compensation and therefore, the same does not warrants interference.

10. Heard the submissions made on either side and perused the materials available on record.

11.With regard to quantum of compensation, at the time of <https://www.residentsofgov.in/for-services/> the deceased was stated to be working as Sorting Assistant in the Department of Post and was also stated to be doing agriculture. The Tribunal by taking into consideration

Ex.P10, the Salary Certificate and also Ex.P.11-Form 16, has awarded a sum of Rs.8,77,920/- for loss of dependency, which is reasonable, in my considered view.

12. The learned counsel for the appellants relied on the judgment reported in **2017 (1) TN MAC 652 (DB) (Oriental Insurance Co., Ltd., vs. S.Venkateswari)**, wherein the Division Bench of this Court awarded a sum of Rs.1,00,000/- towards loss of Consortium to the wife of the deceased, who is aged about 42 years and the same is squarely applicable to the present case on hand and therefore, the compensation of Rs.10,000/- awarded towards Loss of Consortium, is enhanced to Rs.1,00,000/- (Rupees One Lakh Only).

13. Further, the sum of Rs.5,000/- (Rupees Five Thousand only) awarded by the Tribunal towards funeral expenses, is on the lower side and therefore, the same is enhanced to a sum of Rs.20,000/- (Rupees Twenty Thousand Only).

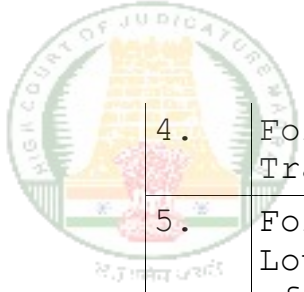
14. Further, the sum of Rs.2,500/- (Rupees Two Thousand and Five Hundred only) awarded by the Tribunal towards loss of estate, is on the lower side and therefore, the same is enhanced to a sum of Rs.10,000/- (Rupees Ten Thousand Only).

15. Further, the sum of Rs.2,000/- (Rupees Two Thousand only) awarded by the Tribunal towards Transport cost of Ambulance, is on the lower side and therefore, the same is enhanced to Rs.10,000/- (Rupees Ten Thousand Only).

16. Further, the sum of Rs.30,000/- (Rupees Thirty Thousand only) awarded by the Tribunal towards loss of love and affection, is on the lower side and therefore, the same is enhanced to Rs.1,00,000/- (Rupees One Lakh Only) and the other heads are confirmed.

17. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For Funeral Expenses	5,000	20,000	Enhanced
2.	For Loss of Consortium to first claimant	10,000	1,00,000	Enhanced
3.	For Loss of Estate	2,500	10,000	Enhanced



4.	For Transport	2,000	10,000	enhanced
5.	For Loss of Love and affection (for claimants 2 & 3)	30,000	1,00,000 (Rs.50,000/- each)	
6.	For Agriculture Land earning	1,50,000	1,50,000	confirmed
6.	For Loss of Dependency	8,77,920	8,77,920	Confirmed
	Total	Rs.10,77,420	Rs.12,67,920	By enhancing a sum of Rs.1,90,500/-

14. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from **Rs.10,77,420-** (Rupees Ten Lakhs Seventy Seven Thousand Four Hundred and Twenty only) to a sum of **Rs.12,67,920/-** (Rupees Twelve Lakhs Sixty Seven Thousand Nine Hundred and Twenty only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The second respondent/Insurance Company is directed to deposit the entire award amount of **Rs.12,67,920/-** (Rupees Twelve Lakhs Sixty Seven Thousand Nine Hundred and Twenty only) with accrued interests and costs, 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 being made, the appellants/claimants are permitted to withdraw the entire award amount, with accrued interests and costs, without filing any formal application before the Tribunal. No Costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To,

1. The V Additional District Judge,
 Madurai.
 Madurai.



2. The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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+1cc to Mr.K.Bhaskaran, Advocate Sr.No.49103
+1cc to Mr.D.Nalla Thambi, Advocate Sr.No.49471

PM

VB/SKN/RSK/SAR3/20.03.2018/5P/6C

C.M.A(MD) No.446 of 2014
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