

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.08.2019

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

C.M.A. No.1678 of 2005

1. Selvi
2. Minor Nandhini
3. Minor Paramasivam
- Minors are represented by their mother/
natural guardian Selvi
4. Chinnammal ... Appellants

versus

1. Periyannan
2. S.Natarajan
3. The United India Insurance Co-Ltd
1476-N, Kumar Complex,
Tiruchengode,
Namakkal District.
(Notice not necessary to the
Respondent 1 in this CMA) ... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying for enhancement of the compensation amount awarded in Judgment and Decree dated 28.10.2003 made in M.C.O.P.No.622 of 2002 on the file of the Motor Accident Claims Tribunal/First Additional District Court, Erode.

For Appellants : Mr.S.Kaithaimalaikumaran

For Respondents : No appearance for R1 and R2.
M/s.I.Malar for R3.

J U D G M E N T

This Civil Miscellaneous Appeal is filed for enhancement of the compensation awarded in the Judgment and Decree dated 28.10.2003 made in M.C.O.P.No.622 of 2002 on the file of the Motor Accident Claims Tribunal/First Additional District Court Erode.

2. On 17.10.2001 at about 7.30.p.m., one Eshwara Moorthy, while riding his cycle in NH 47, was hit by a lorry bearing Registration No.TN28R6199 which was insured with the R3 herein, due to which, he fell down and sustained grievous injuries and succumbed to the same. The legal heirs of the deceased Eshwara Moorthy have filed a claim petition before the Tribunal claiming a sum of Rs.10,00,000/- as total compensation.

3. The Tribunal, based on the evidence and documents on record, has awarded a sum of Rs.1,85,568/- as total compensation payable by the third respondent herein to the appellants herein. Being dis-satisfied with the same, the claimants have preferred this appeal.

4. Heard both sides.

5. Learned counsel for the claimants/appellants submitted that the Tribunal has failed to take into consideration the proper monthly income of the deceased; the Tribunal has failed to award the amount towards transportation to the hospital, love and affection and mental agony. He further submitted that the Tribunal erred in applying the unit method, while arriving at the claim of compensation. He further submitted that in any event, the award passed by the Tribunal needs significant enhancement.

6. Learned counsel for the third respondent / Insurance Company submitted that the Tribunal has considered each and every aspect into consideration and has awarded the compensation, which is nothing but just and needs no interference.

7. Since the Appeal has been preferred by the claimants seeking enhancement of the compensation, this Court would like to go into the quantum of compensation awarded by the Tribunal alone, eschewing the negligence aspect.

8. As far as the quantum of compensation awarded by the Tribunal is concerned, the Tribunal, by basing reliance upon the decision reported in 2002 (4) Law weekly 594 (H.S.Ahmed Ussain and another vs. Irbain Aheind and another) has taken the annual income of the deceased at Rs.18,000/-. In the absence of any documentary proof there of, the Tribunal has arrived at the annual income of the deceased at Rs.11,160/- (by computing the unit method). This Court is of the opinion that the unit method computed by the Tribunal is incorrect, since the deceased was aged 40 years and it was stated that he was doing agricultural and milk businesses and was earning Rs.7,000/- per month. In the absence of any contrary evidence adduced by the third respondent herein before the Tribunal, as against the claim made by the claimants, the Tribunal ought to have taken the monthly income of the deceased at Rs.3,000/- atleast, since the Hon'ble Supreme Court as well as this Court, as a normal practice, are taking the monthly income of the deceased, who was working in an unorganized sector at Rs.3,000/- per month. Hence, this Court is of the view that taking the monthly income of Rs.3,000/- would meet the ends of justice. If, Rs.3,000/- is taken as monthly income, the loss of dependency would be Rs.2,64,000/- [Rs.3,000/- (-) $1/3 \times 12 \times 11$ (Multiplier, as per Saria Verna S case)].

9. Further, the Tribunal has awarded a sum of Rs.2,000/- towards funeral expenses, which is based on conventional methodology and hence, the same is confirmed as such. However, the Tribunal has awarded only a sum of Rs.5,000/- towards loss of love and affection, which need significant enhancement and no amount was awarded towards pain and suffering. Hence, a sum of Rs.20,000/- each, totalling to Rs.40,000/-, is awarded towards loss of love and affection and pain and suffering. Thus, the re-structured breakup details of the enhanced compensation read thus:-

Loss of income	-	Rs.2,64,000/-
Loss of love and affection	-	Rs. 20,000/-
Funeral expenses	-	Rs. 2,000/-
Pain and suffering	-	Rs. 20,000/-

		Rs.3,06,000/-

10. In the result, the Civil Miscellaneous Appeal is partly-allowed by enhancing the total amount of compensation from Rs.1,85,560/- to Rs.3,06,000/-, which is payable with interest at the rate of 7.5% from the date of petition till the date of deposit. No costs.

11. The third respondent / Insurance Company shall deposit the enhanced compensation amount, as awarded by this Court, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment.

12. It is stated by the learned counsel for the appellants that the claimants 2 and 3 / appellants 2 and 3 have attained majority.

12.1. Accepting the said submission and on such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Accounts of the claimants 1 and 4 / appellants 1 and 4, within one week thereafter, through RTGS, and in respect of claimants 2 and 3, / appellants 2 and 3, their share of compensation shall be transferred to their respective Savings Bank Accounts, through RTGS, upon making proper application before the Tribunal. The proportionment of the compensation shall be as per the ratio of apportionment made by the Tribunal.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

To

1. Motor Accident Claims Tribunal/First Additional District Court, Erode.

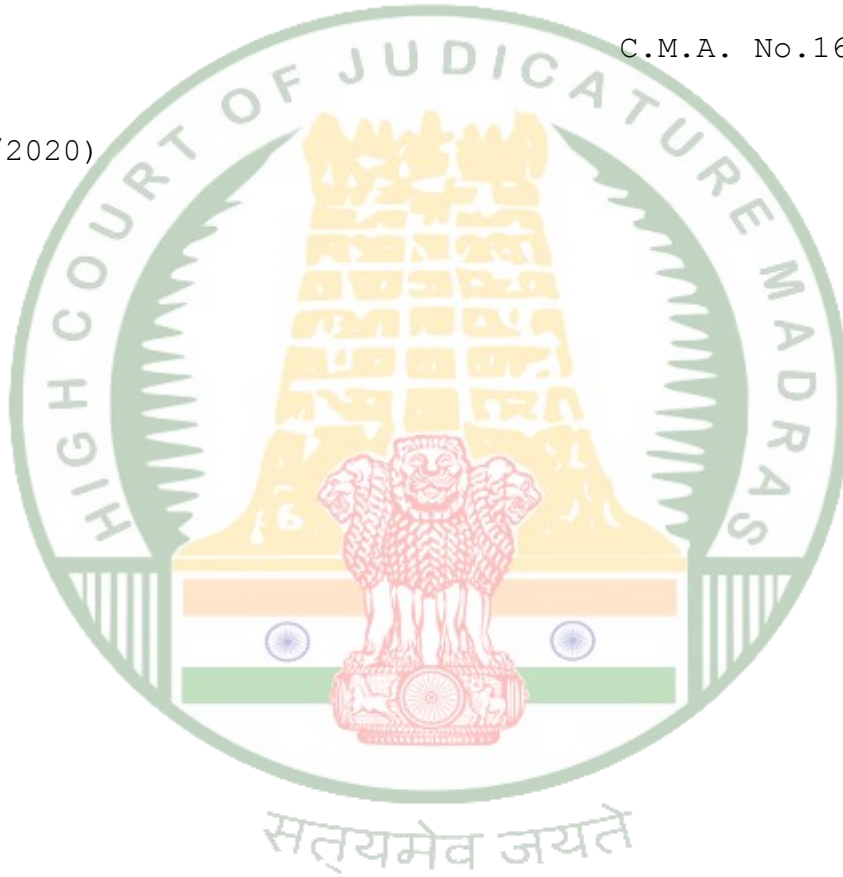
2. The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.S.Kaithaimalaikumaran, Advocate SR.No.70070

+1cc to Mr.T.Ravichandran, Advocate SR.No.70790

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RV(CO)
GMY(15/06/2020)



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