

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1075 of 2015

- 1.Pappathi
- 2.Anbu
- 3.Bharathi
- 4.Kanthazhi

....Appellants/Petitioners

Vs.

1. The Managing Director,
Vijayan and Road Lines Limited,
Prabha Talkies Buildings,
No.31, Trichy Main Road,
Gugai, Salem.

- 2.The United India Assurance Company Limited,
Represented by its Divisional Office,
No.2, Doctor Sankaran Road,
Namakkal Town, Namakkal.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree, in M.C.O.P.No.234 of 2012, dated 11.02.2015 on the file of Motor Accident Claims Tribunal [Sub Court], Rasipuram.

For Appellants : Mr.K. Varadhakamaraaj

For Respondent-2 : Mr S. Arunkumar

R1 : NA

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J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award and decree, in M.C.O.P.No.234 of 2012, dated 11.02.2015 on the file of Motor Accident Claims Tribunal [Sub Court], Rasipuram. The appellants are claimants in M.C.O.P.No.234 of 2012 on the file of Motor Accident Claims Tribunal [Sub Court], Rasipuram. They filed the above claim petition claiming a sum of

Rs.15,00,000/- as compensation for the death of one Kandan, who died in the accident that took place on 12.04.2012.

2.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 bearing Registration No.TN-30-L-0902 belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.5,76,500/- as compensation to the appellants.

3.Not being satisfied with the amount awarded by the Tribunal the appellants have come out with the present appeal seeking enhancement of compensation.

4.The learned counsel appearing for the appellants contended that the deceased was doing iron scrap business and was earning a sum of Rs.10,000/- per month. The Tribunal, without considering the evidence let in by the appellants, erroneously fixed a meager amount of Rs.4,500/- per month as the income of the deceased. The Tribunal has not awarded any amount for future prospects. The amounts awarded by the Tribunal under different heads are meager and prayed for allowing this appeal.

5.Per Contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not let in oral and documentary evidence to prove the age, avocation and income of the deceased. In the absence of any evidence, the Tribunal has fixed the age of the deceased as 48 years and the notional income at Rs.4,500/- per month. The amounts awarded by the Tribunal are not meager and prayed for dismissal of the above appeal.

6.Heard the learned counsel appearing for the appellants as well as the 2nd respondent/Insurance Company and perused all the materials available on record.

7.The learned counsel appearing for the appellants contended that the deceased was doing iron scrap business and was earning a sum of Rs.10,000/- per month. The appellants have not produced any materials to substantiate the same. In the absence of any such evidence, the Tribunal has fixed the notional income of the deceased at Rs.4,500/- per month. The accident took place on 12.04.2012 and the notional income fixed by the Tribunal is meager and the same is enhanced to Rs.6,500/- per month. The Tribunal, considering the Post-Mortem Report and the evidence of Doctor, fixed the age of the deceased as 48 years. The Tribunal has not granted any amount for future prospects and amount awarded by the Tribunal under different heads are meager. The appellants are entitled to 25% enhancement for future prospects [Rs.6500 x 25%]. The 1st

appellant is entitled to Rs.40,000/- towards loss of consortium. The sum of Rs.10,000/- awarded by the Tribunal towards funeral expenses is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate and a sum of Rs.15,000/- is awarded under this head. A sum of Rs.20,000/- awarded towards loss of love and affection is confirmed.

8.Thus, the compensation awarded by the Tribunal towards loss of dependency is modified as follows:

Rs.6500/- + Rs.1625 [Rs.6500 x 25%] x 12 x 13 x 3/4=Rs.9,50,625/-.

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	5,26,500/-	9,50,625/-	enhanced
2.	Funeral expenses	10,000/-	15,000/-	enhanced
3.	Loss of love and affection	20,000/-	--	confirmed
4.	Loss of consortium [to 1st appellant]	20,000/-	40,000/-	enhanced
5.	Loss of Estate	--	15,000/-	enhanced
	Total	5,76,500/-	10,20,625/-	Enhanced by Rs.4,44,125/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and award granted by the Tribunal at Rs.5,76,500/- is enhanced to Rs.10,20,625/- along with interest and costs. The respondents 1 & 2 are directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.234 of 2012. On such deposit, the appellants are permitted to withdraw their share of the award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. No costs. The appellants/claimants are directed to pay necessary court fee, if any, on the enhanced compensation.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

msm

To

1. The Motor Accident Claims Tribunal [Sub Court], Rasipuram.

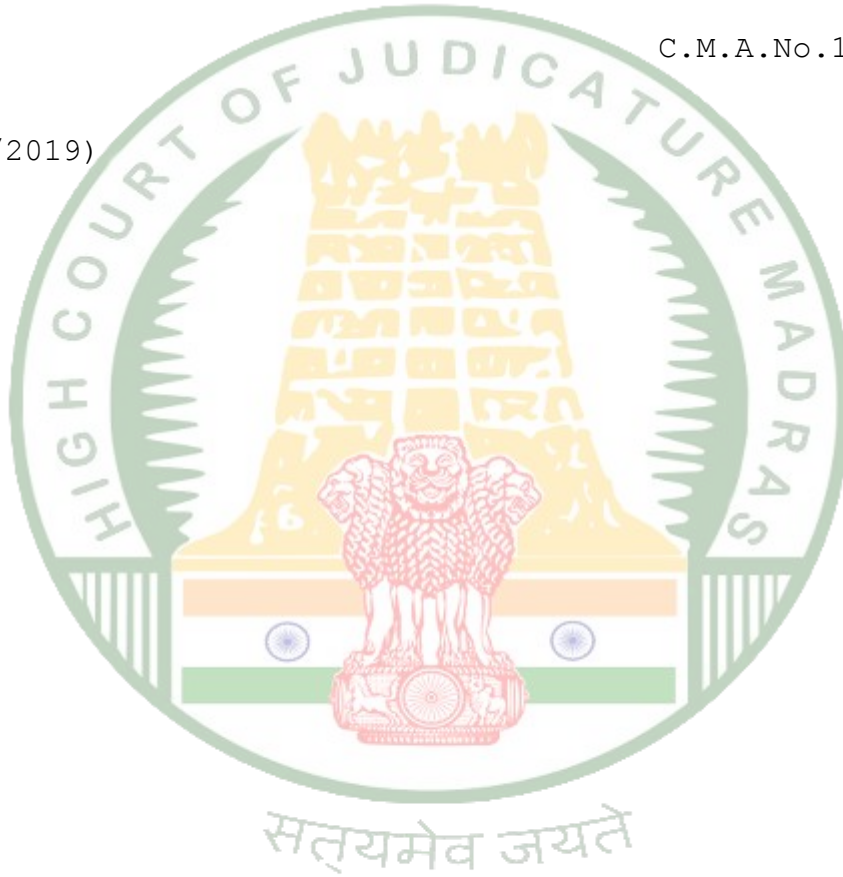
2. The Section Officer, V.R. Section,
High Court of Madras, Chennai-600 104.

+1cc to Mr.K.Varadhakamaraj, Advocate SR.No.3743

+1cc to Mr.S.Arunkumar, Advocate SR.No.4781

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CNR (CO)
GMY (23/04/2019)



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