

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1264 of 2015

1.Smt.Vennila

2.Minor Evansalin (1 Month)
(Rep. by next friend guardian mother 1st petitioner)

3.K.Ravi

4.Gomathi

5.Smt.Poomani ... Appellants/Petitioners

Vs.

1.P.Muthusamy

2.M/s.Reliance General Insurance Co. Ltd.,
Sri Lakshmi Complex,
1st Floor,
Bharathi Street,
Omalur Main Road,
Salem - 4.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.12.2014 made in M.C.O.P.No.500 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellant : Mr.M.R.Thangavel

For R2 : Mr.S.Arunkumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 12.12.2014 made in M.C.O.P.No.500 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court, Salem.

2.The appellants are claimants in M.C.O.P.No.500 of 2013 on the file of Motor Accident Claims Tribunal, Special District Court, Salem. They filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Arokkiya Raj @ Arokkiyasamy, who died in the accident that took place on 30.12.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the first respondent and directed both the first respondent as well as second respondent being the insurer of the said lorry to pay a sum of Rs.11,41,850/- as compensation to the appellants/claimants, jointly and severally.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants/claimants contended that the Tribunal erred in fixing monthly income of the deceased at Rs.6,000/-. The deceased was working as a mason as well as building contractor and was earning a sum of Rs.15,000/- per month. The deceased was aged 26 years at the time of accident and to prove the same, the appellants have marked Ex.P12/birth certificate. The Tribunal erred in calculating the age of the deceased as 27 years. The Tribunal has not stated that on what basis, the multiplier has been applied for awarding compensation. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the appellants have not filed any documents to prove the avocation and income of the deceased. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the deceased, which is not meagre. The Tribunal after considering the materials available on record, has awarded the compensation, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent and perused all the materials available on record.

8. From the materials available on record, it is seen that according to the appellants, the deceased was aged 26 years, he was working as a mason as well as building contractor and was earning a sum of Rs.15,000/- per month. The appellants have examined P.W.3 to prove the avocation and income of the deceased. However, the Tribunal has fixed only a sum of Rs.6,000/- per month as notional income of the deceased. The Tribunal after arriving compensation for loss of dependency deducted 10% towards income tax and granted compensation. The accident is of the year 2012 and the notional income fixed by the Tribunal is meagre. This Court fixes a sum of Rs.8,000/- per month as notional income of the deceased. The Tribunal has fixed age of the deceased as 27 years based on Ex.P10/Aadhar card and applied multiplier 17. The Tribunal has not awarded any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. After deducting 1/3rd towards personal expenses, the loss of dependency awarded by the Tribunal is modified to Rs.15,23,200/- (Rs.8,000/- + 3200 [Rs.8,000/- X 40%] x 12 x 17 x 2/3). After deducting 10% income tax from the amount awarded towards loss of dependency, it comes to Rs.13,70,880/-. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, which is excessive and the same is hereby reduced to Rs.15,000/-. A sum of Rs.30,000/- awarded by the Tribunal towards loss of consortium is meagre and the same is hereby enhanced to Rs.40,000/-. The Tribunal has not awarded any amount towards loss of estate and this Court awards a sum of Rs.15,000/- towards loss of estate. The amounts awarded by the Tribunal under all the other heads are just and reasonable and the same are hereby 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 or reduced
1.	Loss of dependency	7,34,400	13,70,880	Enhanced
2.	Funeral expenses	25,000	15,000	Reduced
3.	Loss of consortium	30,000	40,000	Enhanced
4.	Loss of love and affection to the minor/2 nd appellant	40,000	40,000	Confirmed

5.	Loss of love and affection to the appellants 3 and 4	20,000	20,000	Confirmed
6.	Loss of love and affection to the 5 th appellant	10,000	10,000	Confirmed
7.	Medical bills	2,82,250/-	2,82,250	Confirmed
8.	Loss of estate	-	15,000	Granted
	Total	11,41,850 (Though the Tribunal calculated at Rs.11,41,650/-, has awarded total compensation at Rs. 11,41,850/-)	17,93,130	Enhanced by Rs.6,51,280/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,41,850/- is hereby enhanced to Rs.17,93,130/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants / claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. Both the first respondent as well as second respondent / Insurance Company are directed to deposit the enhanced award amount now determined by this Court along with interest and costs jointly and severally, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1, 3 to 5 are permitted to withdraw their respective share from the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor 2nd appellant is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st appellant being the mother of the 2nd appellant

is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

Kj

To

1.The Special District Judge
The Motor Accident Claims Tribunal
Salem.

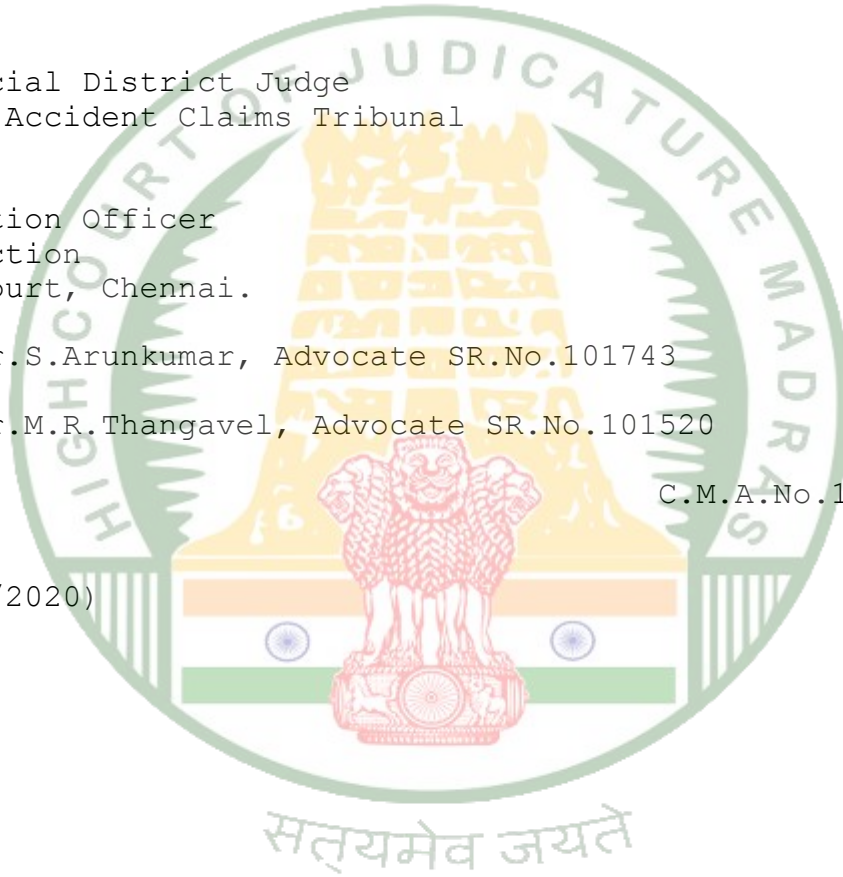
2.The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mr.S.Arunkumar, Advocate SR.No.101743

+1cc to Mr.M.R.Thangavel, Advocate SR.No.101520

C.M.A.No.1264 of 2015

SSD(CO)
GMY(18/08/2020)



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