

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2138 of 2000

1.J.Akila Devi
2.J.Ganesh Kumar
3.J.Lakshmi Harini
(Minor appellants 2 and 3
rep.by their mother J.Akila Devi,
the first respondent herein).Appellants /Climants

Vs

1.K.Boopalan (Owner)
2.M/s.Oriental Insurance Company Limited
3.Anandan (Driver) Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 14.08.2000 made in MCOP No.3530 of 1998 on the file of the Second Judge, Court of Small Causes, Motor Accidents Claims Tribunal, Chennai.

For Appellants : Mr.V.Gopalakrishnan

For Respondents : No appearance for R1
Mr.M.Rajasekar for R2

JUDGMENT

This appeal is preferred by the appellants/claimants against the award of a sum of Rs.2,81,000/- towards compensation due to the death of the husband of the first respondent, in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 14.01.1998, at about 14.10 hours, the deceased Jayaraj was driving his scooter bearing Reg.No.TSA-502 in the G.S.T.Road, towards Villupuram. When the scooter reached near the side road to Valuthavoor, the lorry bearing Reg.No.TN-32-Y-3732 loaded with jelly, came from the same direction in a rash and negligent manner at high speed, and

dashed against the scooter which the deceased was driving. Due to the said impact, the deceased sustained grievous and multiple injuries. The deceased was taken to the Government Hospital, Villupuram and he succumbed to the injuries on 17.01.1998 at about 03.45 hours in the Government General Hospital, Chennai. The legal heirs of the deceased filed a claim petition before the Tribunal claiming a sum of Rs.3,79,200/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,81,000/- with interest at the rate of 12% per annum from the date of petition.

3.Challenging the same, the appellants -claimants have filed the present Civil Miscellaneous Appeal for enhancement of compensation.

4.The learned counsel for the appellants /claimants has submitted that the Tribunal ought to have fixed higher amount while determining the monthly income of the deceased, while awarding compensation. It is also submitted that the amounts awarded towards other heads are very low. Stating so, the learned counsel prayed for enhancement of compensation.

5.There is no appearance on behalf of the first respondent.

6.Heard the learned counsel for the appellants / claimants and perused the materials available on record carefully and meticulously.

7.The Tribunal has awarded a sum of Rs.2,64,000/- towards loss of income. The said sum has been arrived at by taking the monthly income of the deceased at Rs.3,000/-, deducting 1/3rd of the amount towards personal expenses of the deceased and adopting the multiplier of 11. Ex.P4 is the Salary Certificate, from which it is seen that the deceased was working as a Senior Technician in a company; his gross salary was Rs.5,290/- per month; he was getting a net salary of Rs.2,890/- after deductions. In these circumstances, the Tribunal fixed the monthly income of the deceased at Rs.3,000/- and deducted 1/3rd of the amount towards his personal expenses. This Court is of the considered view that it would be appropriate to fix his monthly income after deducting his personal expenses, at Rs.3,250/-. If Rs.3,250/- is taken as his monthly income, the contribution of the deceased to his family works out to Rs.4,29,000/- (Rs.3,250/- x 12 x 11). Thus, the loss of income awarded by the Tribunal stands modified to Rs.4,29,000/-. The Tribunal has awarded a sum of Rs.2,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium and Rs.10,000/- towards loss of love and affection. It would be appropriate to award a sum of Rs.10,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses, instead of the amounts

awarded by the Tribunal towards these heads. Accordingly, the amounts awarded by the Tribunal towards loss of consortium and funeral expenses, stands modified to Rs.10,000/- and Rs.5,000/- respectively. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Loss of income	4,29,000/-
Loss of consortium	10,000/-
Loss of love and affection	10,000/-
Funeral expenses	5,000/-
TOTAL...	----- 4,54,000/- =====

8.Thus, the claimants are entitled to the modified compensation of Rs.4,54,000/-. It is made clear that only for the compensation of Rs.2,81,000/- awarded by the Tribunal, the interest rate shall be 12% per annum from the date of petition. For the additional amount now granted by this Court, ie., Rs.1,73,000/-, the interest rate shall be 7.5% per annum from the date of filing of this appeal.

9.It is seen that this appeal was dismissed for non-prosecution on 13.08.2007 and the same has been restored to file by order 09.07.2019. Hence, the claimants are not entitled for interest for the period from 13.08.2007 to 08.07.2019.

10.The second respondent Insurance Company is directed to deposit the modified compensation as ordered above, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The second and the third appellants - Minors would have attained majority by now. Hence, on such deposit, the appellants / claimants are permitted to withdraw the same, on making proper application before the Tribunal.

11.The appellants/claimants are directed to pay the appropriate Court fee for the enhanced amount of compensation.

12.The Civil Miscellaneous Appeal is disposed of with the above modification. No costs.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

KM

To

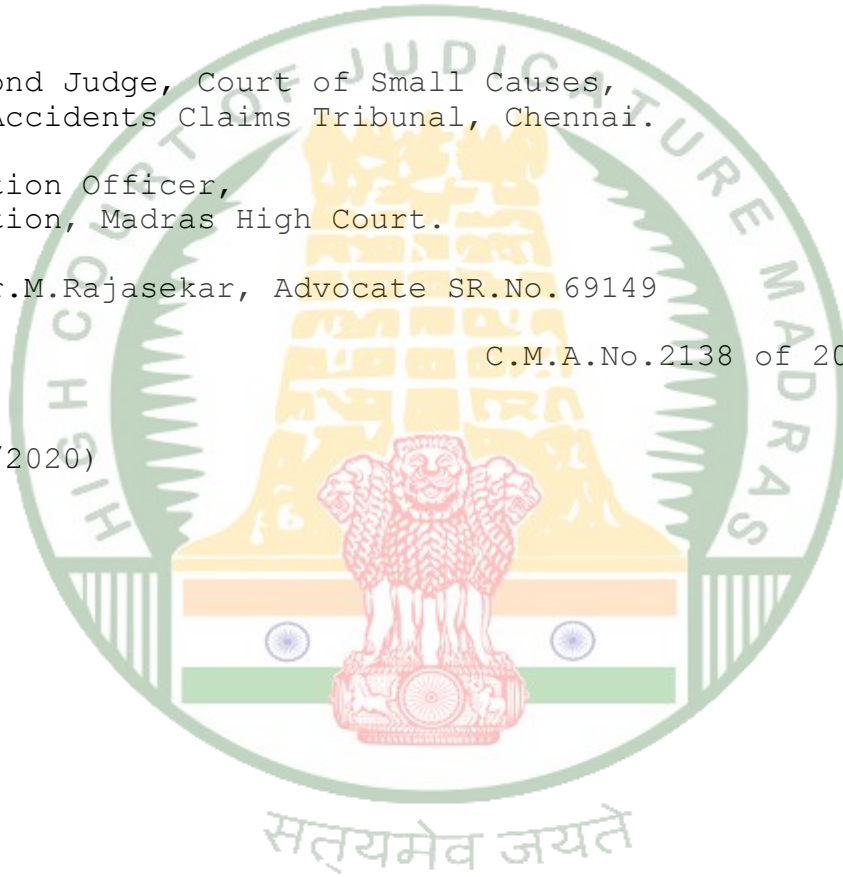
1.The Second Judge, Court of Small Causes,
Motor Accidents Claims Tribunal, Chennai.

2.The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.M.Rajasekar, Advocate SR.No.69149

C.M.A.No.2138 of 2000

SJ (CO)
GMY (12/06/2020)



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