

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2465 of 2015 and
M.P.No.1 of 2015

Oriental Insurance Company Limited,
Extension Counter, S.K.S.Plaza,
2nd floor, Near Police Station,
R.S.Road, Perundurai. .. Appellant / 2nd Respondent

Vs.

1.Lakshmi
2.Govindammal
3.V.Sakthivel
4.Karuppathal

..Respondents 1 to 4 /
Claimants 1 to 4

5.Murugaprakash ..5th Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.10.2014 made in M.C.O.P.No.804 of 2012 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur.

For Appellant : Mr.S.Manohar

For RR1 to 4 : Mr.Ma.P.Thangavel

For R5 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 28.10.2014 made in M.C.O.P.No.804 of 2012 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur.

2.The appellant is the second respondent in M.C.O.P.No.804 of 2012 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur. The respondents 1 to 4 filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one K.Venkatachalam, who died in the accident that took place on 02.05.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the car belonging to the fifth respondent and directed the appellant-Insurance Company to pay a sum of Rs.10,56,500/- as compensation to the respondents 1 to 4.

4.Against the said award dated 28.10.2014 made in M.C.O.P.No.804 of 2012, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erroneously awarded excessive amount of Rs.10,56,500/- as compensation for the death of a man who was aged 60 years. The respondents 1 to 4 contended that the deceased was doing rice business, milk vending business and was also an agriculturist and was earning a sum of Rs.25,000/- per month. The respondents 1 to 4 did not produce any material evidence to prove the avocation and income of the deceased. In the absence of material evidence, the Tribunal fixed monthly income of the deceased at Rs.10,000/-, which is excessive. The respondents 1 to 4 are entitled to only 10% enhancement towards future prospects. The Tribunal granted 15% enhancement towards future prospects, which is excessive. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.

6.Per contra, Mr.Ma.P.Thangavel, learned counsel appearing for the respondents 1 to 4 contended that the deceased was doing rice business, milk vending business and also was an agriculturist and was earning a sum of Rs.25,000/- per month. The Tribunal erroneously fixed a sum of Rs.10,000/- as monthly income of the deceased, which is meager. The Tribunal has not granted any amount towards loss of estate. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the respondents 1 to 4 and perused the entire materials on record.

8.From the materials available on record, it is seen that respondents 1 to 4 contended that the deceased was doing rice business, milk vending business and also an agriculturist and was earning a sum of Rs.25,000/- per month. The respondents 1 to 4 have not produced any material evidence to prove the avocation and income of the deceased. In the absence of material evidence, the Tribunal fixed a sum of Rs.10,000/- as monthly income of the deceased, which is on the higher side. A sum of Rs.9,000/- is

fixed by this Court as monthly income of the deceased. The Tribunal granted 15% enhancement towards future prospects, which is excessive. The deceased was aged 60 years at the time of accident and the respondents 1 to 4 are entitled to only 10% enhancement towards future prospects. Applying the multiplier '9' and after deducting $1/3^{\text{rd}}$ towards the personal expenses of the deceased, the amount awarded by the Tribunal towards loss of income is hereby modified to Rs.8,01,900/- {[Rs.9,000/- + Rs.900/- (10% of Rs.9,000/-)] X 12 X 9 X $\frac{3}{4}$ }. The Tribunal has granted excessive sum of Rs.50,000/- towards loss of consortium to the first respondent and the same is hereby reduced to Rs.40,000/-. A sum of Rs.25,000/- granted by the Tribunal towards funeral expenses is excessive and the same is reduced to Rs.15,000/-. The Tribunal has not granted any amount towards loss of estate. A sum of Rs.15,000/- is granted by this Court towards loss of estate. The amount awarded by the Tribunal towards loss of love and affection is 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
1.	Loss of income	9,31,500/-	8,01,900/-	reduced
2.	Loss of consortium	50,000/-	40,000/-	reduced
3.	Loss of love and affection	50,000/-	50,000/-	confirmed
4.	Funeral expenses	25,000/-	15,000/-	reduced
5.	Loss of estate	-	15,000/-	granted
	Total	Rs.10,56,500/-	Rs.9,21,900/-	reduced by Rs.1,34,600/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,56,500/- is hereby modified to Rs.9,21,900/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court, together 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. On such deposit, the respondents 1 to 4 are permitted to withdraw their respective share of the modified award amount, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making

necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.804 of 2012 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur, if the entire amount has already been deposited. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruppur.

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

+1 cc to Mr.S.Manohar, Advocate, S.R.No.40699

+1 cc to Mr.Ma.P.Thangavel, Advocate, **S.R.No.40460 (26/04/2019)**

C.M.A.No.2465 of 2015 and
M.P.No.1 of 2015

VBA (CO)
SSM(04/09/2019) .
SSM(01/10/2019)

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