

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 589 of 2015

D. Kamaraj (Died)

1.K. Selvaganthimathy

2.Minor K. Karthickraj

3.Minor K. Kapilashree

4.Pakkiyammal ... Appellants

(minors 2 and 3 are rep. By their mother and natural guardian, 1st appellant)

(Cause title accepted vide order of this Court dated 30.04.2013, made in M.P. No. 1 of 2013 in C.M.A.SR.No. 41270 of 2013)

Vs.

1.J. Javeed Ahamed

2.K.B. Mohamed Niyaz

3.M/s. The National Insurance Co. Ltd.,
No. 25, Coimbatore Road,
Pollachi, Coimbatore District.

... Respondents

(Since 1st and 2nd respondents remained exparte before the Tribunal. Hence, notice dispensed with.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 05.09.2005, made in M.C.O.P.No. 188 of 2004, on the file of the II Additional Sub Court, (Motor Accident Claims Tribunal), Coimbatore.

For Appellants : Mr. P.M. Duraiswamy

For Respondents: Mr. K. Padmanabhan (For R3)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the award dated 05.09.2005, made in M.C.O.P.No. 188 of 2004, on the file of the II Additional Sub Court, (Motor Accident Claims Tribunal), Coimbatore.

2.Originally, the deceased D. Kamaraj filed M.C.O.P.No. 188 of 2004, on the file of the II Additional Sub Court, (Motor Accident Claims Tribunal), Coimbatore, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.02.2003.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 1st respondent, rider of the Motorcycle belonging to the 2nd respondent, insured with the 3rd respondent and directed the respondents to jointly and severally pay a sum of Rs.78,000/- as compensation to the deceased D. Kamaraj/claimant for his injuries.

4.After the Tribunal passed the award, the said D. Kamaraj died. The appellants who are the legal heirs of the said D. Kamaraj filed the present appeal, for enhancement of the compensation granted by the Tribunal by the award dated 05.09.2005, made in M.C.O.P.No. 188 of 2004, along with M.P. No. 1 of 2013 to accept the cause title. This Court vide order dated 30.04.2013, allowed the said petition.

5.Learned counsel appearing for the appellants contended that due to the accident, the deceased claimant sustained multiple fractures on his head and took treatment as in-patient in Kovai Medical Centre from 27.02.2003 to 11.03.2003 and thereafter, took treatment in a private hospital at Thadagam. Due to the severe head injuries with multiple fractures, he died on 11.11.2007, subsequent to the award of the Tribunal. The deceased claimant was working as a Sales Executive and was earning a sum of Rs.4,500/- per month. The Tribunal erroneously granted a meagre sum of Rs.10,000/- towards loss of earning. Considering the multiple injuries and severity of head injuries, the Tribunal ought to have awarded compensation towards permanent disability. The amounts awarded by the Tribunal towards pain and suffering, extra nourishment and transport expenses are very meagre. In any event, the total compensation awarded by the Tribunal is meagre and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the Tribunal, in the absence of any material evidence to prove the avocation and income of the deceased claimant, has awarded a sum of Rs.10,000/- as compensation towards loss of income, which is not meagre. The deceased claimant failed to examine the Doctor to prove the nature of injuries sustained by him. The total compensation awarded by the Tribunal is just and not meagre. The appellants have not made out any case for enhancement of the same 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 3rd respondent and perused the materials available on record.

8.From the materials on record, it is seen that the claim petition has been filed by D. Kamaraj seeking compensation for the injuries sustained by him. The same is personal right and after his death, the legal heirs are not entitled to maintain the appeal for enhancement of compensation, except medical expenses. From the materials on record, it is seen that the appellants have claimed that a sum of Rs.2,55,000/- was spent by the deceased towards medical expenses. The deceased filed Ex.P9 to substantiate the said claim. The Tribunal considering Ex.P9, held that huge amounts are paid to the Hospital and Doctor was not able to explain as to why such huge amounts are claimed by the Hospital and awarded only Rs.50,000/- against the claim of Rs.2,55,000/-. The reasoning of the Tribunal for awarding only Rs.50,000/- towards medical expenses is erroneous. The appellants are entitled to the entire amount of Rs.2,55,000/- towards medical expenses. The appellants are not entitled to any enhancement under other heads 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
1.	Loss of income	10,000/-	10,000/-	Confirmed
2.	Transportation	1,000/-	1,000/-	Confirmed
3.	Extra nourishment	2,000/-	2,000/-	Confirmed
4.	Medical expenses	50,000/-	2,55,000/-	Enhanced
5.	Pain and suffering	10,000/-	10,000/-	Confirmed

6.	Injuries	5,000/-	5,000/-	Confirmed
	Total	78,000/-	2,83,000/-	Enhanced by Rs.2,05,000/-

9. In the result, the appeal is partly allowed and amount awarded by the Tribunal at Rs.78,000/- is enhanced to Rs.2,83,000/- along with interest and costs. The respondents are jointly and severally directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 188 of 2014. In the enhanced award amount, the 1st appellant is entitled to a sum of Rs.1,00,000/-, minor appellants 2 and 3 are entitled to a sum of Rs.70,000/- each and the 4th appellant is entitled to a sum of Rs.43,000/-. The appellants 1 and 4 are permitted to withdraw their share of the award amount along with proportionate interest and costs, as mentioned above, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. The shares of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st appellant, mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.2,05,000/-, enhanced by this Court, as per the order of this Court dated 13.03.2015, made in M.P. No. 2 of 2013 in C.M.A. SR. No. 41270 of 2013. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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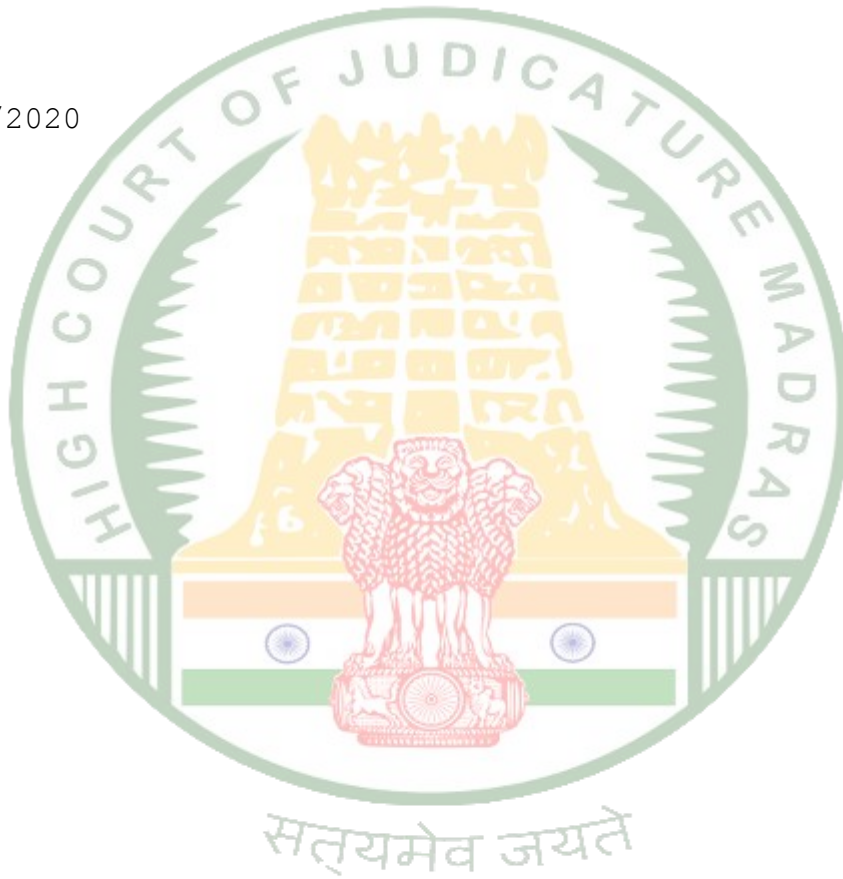
1. The II Additional Subordinate Judge,
(Motor Accident Claims Tribunal),
Coimbatore.

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

+1cc to Mr.P.M.Duraiswamy, Advocate Sr.103207

C.M.A. No. 589 of 2015

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