

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1211 of 2018

1.Lakshmi
2.Senthilkumar
3.Sekar

..Appellants/Petitioners

Vs.

1.Thennarasu

2.The National Insurance Co. Ltd.,
2nd Floor, 81-D, Chetty Street,
Opp. To Bus stand, Tiruchengode Taluk,
Namakkal District. .. Respondents/Respondents
(R1 set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 10.08.2017 made in M.C.O.P.No.1033 of 2015 on the file of the Principal District Judge, (Motor Accident Claims Tribunal), Namakkal.

For Appellants : Mr.T.S.Arthanareeswaran

For R2 : Mr.S.Vadivel

For R1 : Ex-parte before the tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants/claimants seeking enhancement of the compensation granted by the award dated 10.08.2017 made in M.C.O.P.No.1033 of 2015 on the file of the Principal District Judge, (Motor Accident Claims Tribunal), Namakkal.

2.The appellants/claimants filed M.C.O.P.No.1033 of 2015 on the file of the Principal District Judge, (Motor Accident Claims Tribunal), Namakkal, claiming a sum of Rs.25,00,000/- as compensation for the death of one Kandasamy, husband of the 1st

appellant and father of the appellants 2 & 3, who died in the accident that took place on 26.04.2015.

3.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 car belonging to the 1st respondent and directed the 2nd respondent to pay a sum of Rs.5,39,000/- as compensation to the appellants/claimants.

4.Not being satisfied with the amounts granted by the award dated 10.08.2017 made in M.C.O.P.No.1033 of 2015, the appellants/claimants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the deceased was working as a coolie and was earning a sum of Rs.20,000/- per month. The Tribunal has fixed meagre amount of Rs.6,000/- as notional income of the deceased. The Tribunal erred in not awarding any enhancement towards future prospects and the amounts granted towards transportation and funeral and a sum of Rs.2,000/- granted towards loss of love and affection to the appellants are very meagre. The Tribunal ought to have awarded more compensation under different heads and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the deceased was 55 years at the time of accident and the Tribunal following the judgment of this Court in similar facts, fixed the annual income of the deceased at Rs.6,000/- and applied the multiplier of '11' and deducted 1/3rd towards the personal expenses of the deceased and awarded compensation under the head of loss of dependency. The Tribunal has also awarded various amounts under different heads. The appellants have not proved that the deceased was working as a coolie and was earning Rs.20,000/- per month. The amounts awarded by the Tribunal are not meagre and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on records.

8.From the materials available on record, it is seen that the deceased was 55 years at the time of accident. Even though the appellants have contended that the deceased was working as a coolie, no evidence was produced by the appellants to substantiate their claim that the deceased was working as a coolie and was earning a sum of Rs.20,000/- per month. In such circumstances, following the judgments in this aspect, the Tribunal fixed the notional income of the deceased and applied the multiplier of '11' and awarded compensation. Considering the

fact that the accident is of the year 2015, the notional income of Rs.6,000/- fixed by the Tribunal is very meagre. Hence, a sum of Rs.9,000/- is fixed as the notional income of the deceased. The Tribunal has not granted any amount towards future prospects. The appellants are entitled to 10% enhancement towards future prospects. Deducting 1/3rd towards the personal expenses of the deceased, the loss of dependency is modified to Rs.8,71,200/- {[Rs.9,000/- + Rs.900/- (10% of Rs.9,000)] x 12 x 11 x 2/3}. The Tribunal has awarded only a sum of Rs.2,000/- towards loss of estate and a sum of Rs.5,000/- towards funeral expenses. The same are very meagre and hence, they are enhanced to Rs.15,000/- each. The Tribunal has not awarded any amount to the 1st respondent towards loss of consortium. The 1st appellant is entitled to a sum of Rs.40,000/- towards loss of consortium. The amounts granted by the Tribunal under all other heads are just and reasonable and they 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 dependency	5,28,000/-	8,71,200/-	enhanced
2.	Funeral expenses	5,000/-	15,000/-	enhanced
3.	Transportation charges	2,000/-	2,000/-	confirmed
4.	Loss of love and affection	2,000/-	2,000/-	confirmed
5.	Loss of consortium	-	40,000/-	granted
6.	Loss of estate	2,000/-	15,000/-	enhanced
	Total	5,39,000/-	9,45,200/-	enhanced by Rs.4,06,200/-

9. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.5,39,000/- is enhanced to Rs.9,45,200/- along with interest and costs. The respondents 1 and 2 are directed to deposit the award amount jointly and severally 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.1033 of 2015. On such deposit, the appellants are permitted to withdraw 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa/rst

To

1.The Principal District Judge,
(Motor Accident Claims Tribunal), Namakkal.

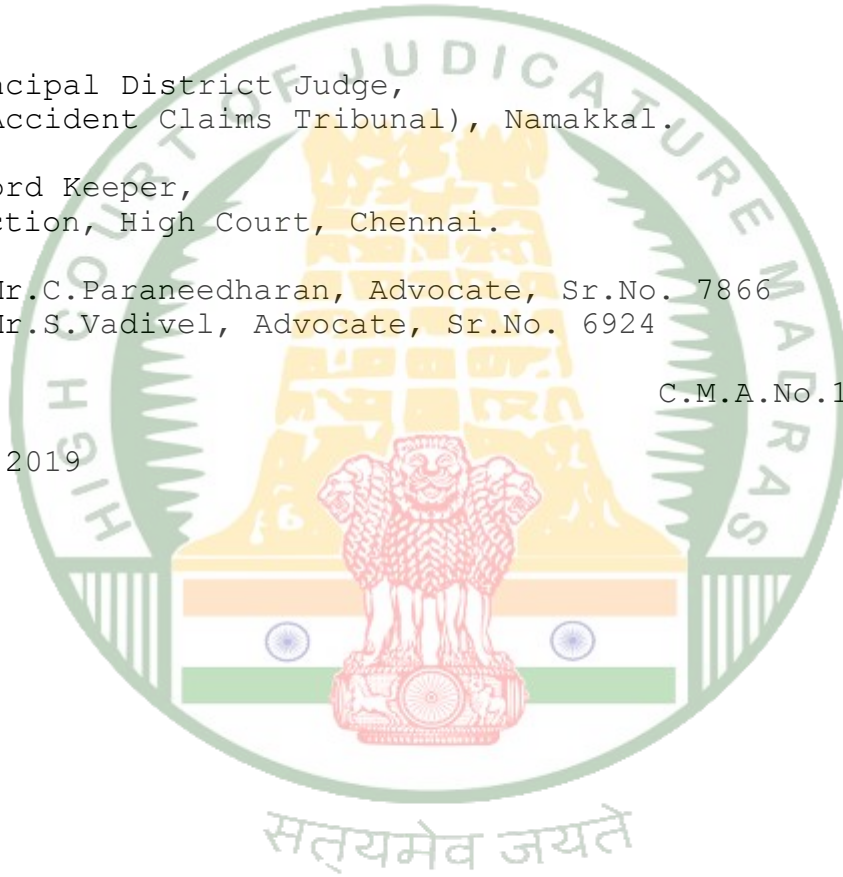
2.The Record Keeper,
V.R.Section, High Court, Chennai.

+2 cc to Mr.C.Paraneedharan, Advocate, Sr.No. 7866

+1 cc to Mr.S.Vadivel, Advocate, Sr.No. 6924

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CSL/03.07.2019



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