

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.363 of 2018

G.Elsa

.. Appellant/ Petitioner

.Vs.

1.A.Velmurugan

2.National Insurance Co. Limited,
No.751, Anna Salai,
Chennai - 600 002.
Now at No.46, Moore Street,
Chennai - 600 001.

.. Respondents/ Respondents

Prayer:- This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.06.2017 made in M.C.O.P.No.7109 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellant : Mr.A.Shanmugaraj

For R2 : Mr.J.Michael Visuvasam

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 16.06.2017 made in M.C.O.P.No.7109 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

2.By consent of both parties, the appeal is taken up for final disposal at the stage of admission itself.

3.The appellant is claimant in M.C.O.P.No.7109 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai. She filed the said claim petition

claiming a sum of Rs.10,00,000/- as compensation for the death of one Giri, who died in the accident that took place on 22.04.2013. 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 auto belonging to 1st respondent and directed the 2nd respondent-Insurance Company being insurer of the said auto to pay a sum of Rs.5,20,400/- as compensation to the appellant at the first instance and recover the same from the 1st respondent. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

4.The learned counsel appearing for the appellant contended that the deceased was working as a loadman in Tricycle and was earning a sum of Rs.15,000/- per month (500 x 30) at the time of the accident. The Tribunal erred in fixing a meagre sum of Rs.6,000/- per month. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

5.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident was not due to the rash and negligent driving by the driver of the 1st respondent's vehicle. The appellant failed to prove the avocation, age, occupation and income of the deceased. In the absence of any material, the Tribunal has fixed notional income of the deceased at Rs.6,000/- per month and granted 15% enhancement towards future prospects. The amount awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

6.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused all the materials available on record.

7.From the materials available on record, it is seen that the appellant has contended that the deceased was working as a loadman in Tricycle and was earning a sum of Rs.15,000/- per month (500 x 30) at the time of the accident. The appellant has failed to produce the documents to substantiate the said contention. In the absence of any material, the Tribunal has fixed notional income of the deceased at Rs.6,000/- per month and the same is meagre. The accident is of the year 2013 and the deceased was aged 55 years at the time of accident. Hence, a sum of Rs.8,000/- per month is fixed as notional income of the deceased. The Tribunal has granted 15% enhancement towards future prospects whereas the appellant is entitled to only 10% enhancement towards future prospects. The amount granted by the

Tribunal towards loss of dependency is modified to Rs.7,74,400/- (Rs.8,000/- + 800 (10% x Rs.8,000) x 12 x 11 x 2/3). The amount awarded by the Tribunal towards loss of consortium is meagre and hence, the same is enhanced to Rs.40,000/-. A sum of Rs.25,000/- awarded by the Tribunal towards funeral expenses is on the higher side and the same is reduced to Rs.15,000/-. The amount awarded by the Tribunal towards loss of love and affection is set aside. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. The amount awarded by the Tribunal towards transportation 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 dependency	4,55,400	7,74,400	Enhanced
2.	Loss of consortium	25,000	40,000	Enhanced
3.	Loss of love and affection	10,000	-	set aside
4.	Transport charges	5,000	5,000	Confirmed
5.	Funeral expenses	25,000	15,000	Reduced
6.	Loss of estate	-	15,000	Granted
	Total	Rs.5,20,400/-	Rs.8,49,400/-	Enhanced by Rs.3,29,000/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,20,400/- is hereby enhanced to Rs.8,49,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court 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, at the first instance and recover the same

from the 1st respondent. On such deposit, the appellant is permitted to withdraw the enhanced award amount, now determined by this Court along with interest and costs, less the amount if any, already withdrawn. No costs.
mtl

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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

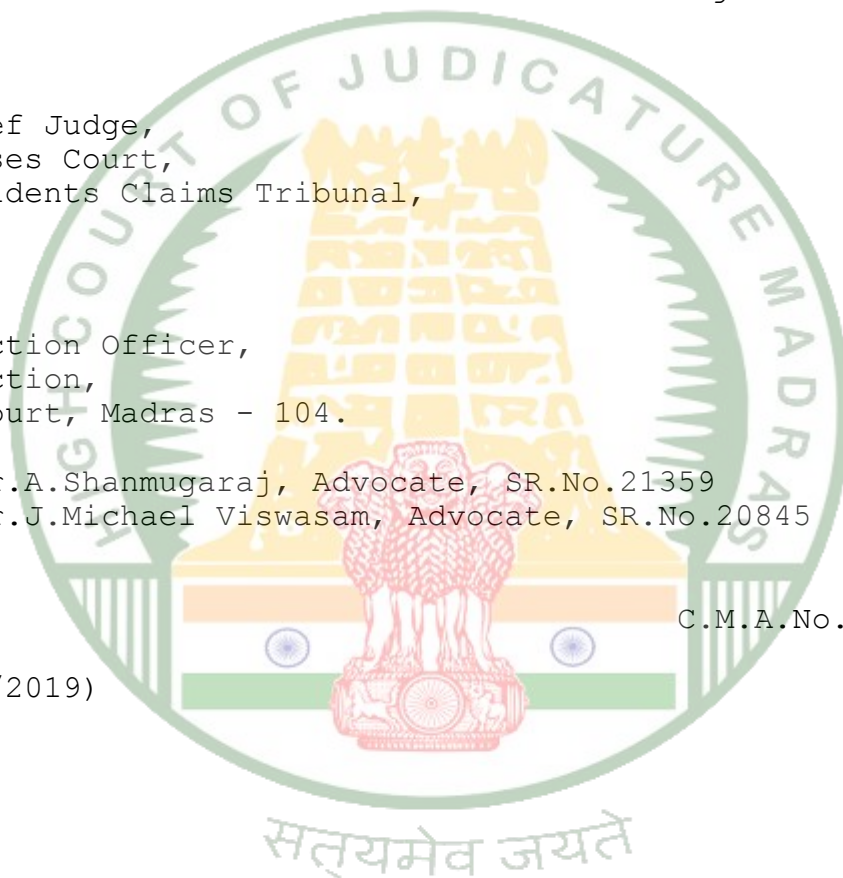
Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.A.Shanmugaraj, Advocate, SR.No.21359
+1cc to Mr.J.Michael Viswasam, Advocate, SR.No.20845

C.M.A.No.363 of 2018

Kak(22/08/2019)



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