

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.473 of 2018

Divyabharathi

..Appellant/Petitioner

Vs.

1.Jegadhesan

2.United India Insurance Co., Ltd.,
146-N, Kumar Complex,
Tiruchengode, Namakkal District.

3.Pappathi

..Respondents

(R1 & R3 were set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 22.08.2017 made in M.C.O.P.No.838 of 2010 on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankari.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.T.Ravichandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant, seeking enhancement of the compensation granted by the award dated 22.08.2017 made in M.C.O.P.No.838 of 2010 on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankari.

2.The appellant/claimant filed M.C.O.P.No.838 of 2010 on the file of the Sub Court, (Motor Accident Claims Tribunal), Sankari, claiming a sum of Rs.20,00,000/- as compensation for the death of her husband, namely Suresh, who died in the accident that took place on 13.09.2008.

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 tanker lorry

belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.15,71,000/- as compensation to the appellant & the 3rd respondent, who are the dependants of the deceased Suresh.

4. Not being satisfied with the amounts granted by the award dated 22.08.2017 made in M.C.O.P.No.838 of 2010, the appellant/claimant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the deceased was doing Auto Consultancy Service and carrying on Agriculture work and was earning a sum of Rs.30,000/- per month. The Tribunal without properly considering the evidence of P.Ws.1 and 2, fixed a meager sum of Rs.6,000/- as the monthly income of the deceased. The Tribunal has not awarded any amounts for loss of estate and total amounts awarded by the Tribunal is meager and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not produced any evidence to show that the deceased was working as an Auto consultant and agriculturist and was earning a sum of Rs.30,000/- per month. In view of the same, the Tribunal considering the judgment of the Hon'ble Apex Court, fixed notional income of the deceased at Rs.6,000/- and granted 50% towards future prospects and awarded excessive amounts under the heads of loss of consortium, loss of love and affection and funeral expenses. Hence, prayed for dismissal of the appeal.

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

8. From the materials available on record, it is seen that the appellant has contended that the deceased was working as an Auto Consultant and agriculturist and was earning Rs.30,000/- per month. Except oral evidence of P.Ws.1 and 2, the appellant has not substantiated her claim that the deceased was earning Rs.30,000/- per month. The Tribunal in the absence of evidence, fixed Rs.6,000/- per month as the income of the deceased. Considering the age, avocation of the deceased, the notional income fixed by the Tribunal is meager and the same is enhanced to Rs.8,000/- per month. As per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) [National Insurance Company Vs. Pranay Sethi & others], the appellant and 3rd respondent are entitled to 40% enhancement for future prospects and entitled to get a sum of Rs.16,12,800/- {[Rs.8,000 + Rs.3,200/- (40% of Rs.8,000)] x 12 x 18 x 2/3} towards loss of income and appellant is entitled for a sum of Rs.40,000/-

towards loss of consortium. The appellant and 3rd respondent are entitled only for a sum of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. However, the Tribunal has awarded excessive amount towards funeral expenses and the same is reduced to Rs.15,000/-. A sum of Rs.15,000/- granted towards loss of estate. The amounts granted by the Tribunal for loss of love and affection is set aside. 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	12,96,000/-	16,12,800/-	enhanced
2.	Loss of consortium	1,00,000/-	40,000/-	reduced
3.	Loss of love & affection	1,50,000/-	-	Set aside
4.	Funeral expenses	25,000/-	15,000/-	reduced
5.	Loss estate	-	15,000/-	granted
	Total	15,71,000/-	16,82,800/-	enhanced by Rs.1,11,800/-

9. In the result, the appeal is allowed and award granted by the Tribunal at Rs.15,71,000/- is enhanced to Rs.16,82,800/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the award amount 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.838 of 2010. On such deposit, the appellant as well as the 3rd respondent 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(CS IV)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal), Sankari.

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

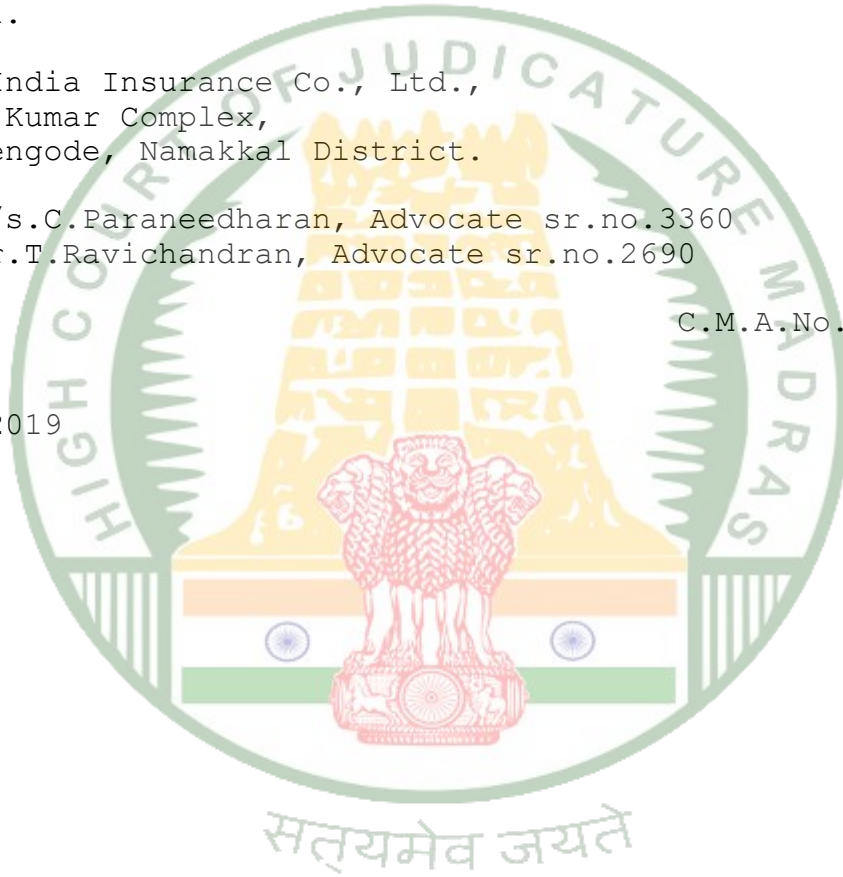
3.United India Insurance Co., Ltd.,
146-N, Kumar Complex,
Tiruchengode, Namakkal District.

+2cc to M/s.C.Paraneedharan, Advocate sr.no.3360

+1cc to Mr.T.Ravichandran, Advocate sr.no.2690

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