

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.604 of 2018

1.R.Pachaiyammal

2.S.Ravichandran ... Appellants/Petitioners

Vs.

1.R.A.Sridhar

(R1 remained exparte before the Tribunal hence his presence may be dispensed with)

2.ICICI Lombard General Insurance Co. Ltd.,
No.142, 1st Floor,
ECR Main Road,
Pondicherry - 1.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.11.2016 made in M.C.O.P.No.169 of 2014 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Thiruvallur at Poonamallee.

For Appellants : Ms.A.Subadra
for Ms.M.Malar

For R2 : Ms.R.Sreevidhya
R1 : Exparte

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 01.11.2016 made in M.C.O.P.No.169 of 2014 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Thiruvallur at Poonamallee.

2.The appellants are claimants in M.C.O.P.No.169 of 2014 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Thiruvallur at Poonamallee. The appellants filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Vinoth, who died in the accident that took place on 26.11.2013. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the Hero Honda Passion motorcycle belonging to 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.9,05,340/- as compensation to the appellants. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellants contended that the deceased was bachelor at the time of the accident. The deceased was working in a Tasmac bar and was earning a sum of Rs.10,000/- per month. The Tribunal failed to consider the evidence of P.W.1 and P.W.2 and documents filed and marked. The amount awarded by the Tribunal towards funeral expenses is meagre. The Tribunal has not awarded any amount towards damages to cloth and articles and prayed for enhancement of compensation.

4.Per contra, Ms.R.Sreevidhya, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants have not filed any documents to prove the avocation, age and income of the deceased. In the absence of any material, the Tribunal has fixed notional income of the deceased at Rs.5,000/- per month which is not meagre and Tribunal has awarded excessive amounts under the conventional heads and appellants are not entitled for enhancement and prayed for dismissal of the appeal.

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

6.From the materials available on record, it is seen that the appellants have contended that the deceased was working in a Tasmac bar and was earning a sum of Rs.10,000/- per month. In the absence of any material, to prove the age, avocation and income of the deceased, the Tribunal has fixed notional income of the deceased at Rs.5,000/- per month, which is meagre and hence the notional income of the deceased is fixed at Rs.7,500/- per month. The deceased was aged 21 years at the time of accident. The appellants are entitled to 40% enhancement towards future prospects. The Tribunal applied multiplier '17'. The

correct multiplier is '18'. The accident is of the year 2013. The amount granted by the Tribunal towards loss of income is modified to Rs.11,34,000/- [(Rs.7,500/- + 3,000 (Rs.7,500/- x 40%) x 12 x 18 x 1/2)]. The Tribunal has awarded a sum of Rs.1,00,000/- each towards loss of love & affection, dependency and pain & sufferings. The same is set aside. The appellants are entitled to Rs.40,000/- each towards loss of love & affection. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses and the same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is granted towards loss of estate. 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	6,80,340	11,34,000	Enhanced
2.	Funeral expenses	25,000	15,000	Reduced
3.	Loss of love and affection, dependency and pain & sufferings	2,00,000	-	Set aside
4.	Loss of estate	-	15,000	Granted
5.	Loss of love & affection	-	80,000	Granted
	Total	Rs.9,05,340/-	Rs.12,44,000/-	Enhanced by - Rs.3,38,660/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,05,340/- is hereby enhanced to Rs.12,44,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are 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. On such deposit, the appellants/claimants are permitted to withdraw their respective share from the enhanced award amount on the basis of

apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

sd/-
Assistant Registrar(insp.cell)

// True Copy//

Sub Assistant Registrar

mtl
To

1.The III Additional District Judget,
Motor Accidents Claims Tribunal,
Thiruvallur,
Poonamallee.

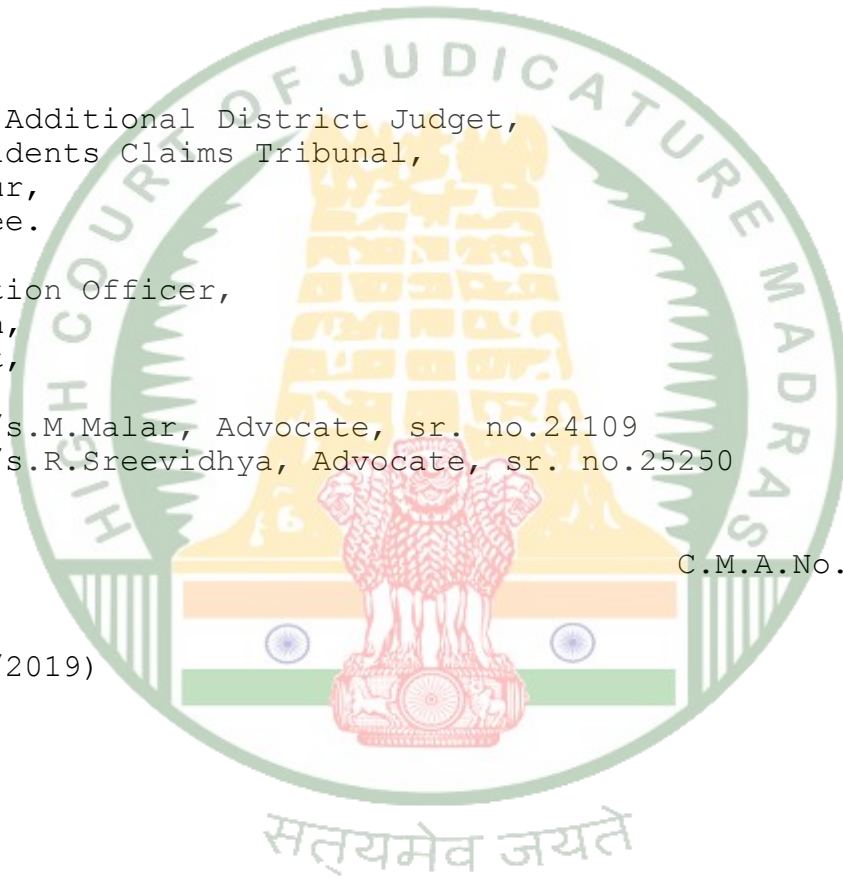
2.The Section Officer,
VR Section,
High Court,
Madras.

+lcc to M/s.M.Malar, Advocate, sr. no.24109

+lcc to M/s.R.Sreevidhya, Advocate, sr. no.25250

C.M.A.No.604 of 2018

EV(CO)
RMP(09/07/2019)



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