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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.703 of 2018

1.Kawsalyadevi.K

2.Minor K.K.Indhumathi

3.Minor K.K.Yuvasri

(2 & 3 Minors represented by their N.F. And .. Appellants
N.G. their mother 1st appellant) (Petitioner 1 to 3)

Vs.

1.A.Shanmugam (Trailor Lorry Owner)

2.The Divisional Manager,
The Oriental Insurance Co. Ltd.,
S.V.Complex, 2nd floor,
No.179, Eswaran Koil Street,
Pondicherry - 1.

3.K.Venugopal Pillai

4.V.Saroja Ammal

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.02.2013 made in M.C.O.P.No.142 of 2009 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Tindivanam.

For Appellants : Mr.S.Partheeban

For R2 : Mr.J.Chandran

For R4 : No appearance

R3 died : Steps due to being on LRS
of the deceased R3



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 08.02.2013 made in M.C.O.P.No.142 of 2009 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Tindivanam.

2.The appellants are claimants in M.C.O.P.No.142 of 2009 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Tindivanam. They filed the said claim petition claiming a sum of Rs.20,65,000/- as compensation for the death of one Ayyanar @ Kannappan, who died in the accident that took place on 10.09.2005. 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 trailer lorry belonging to the 1st respondent and directed the 1st respondent as well as 2nd respondent/Insurance Company being insurer of the said trailer lorry to pay a sum of Rs.5,50,000/- as compensation to the appellants jointly and severally. 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 aged 29 years at the time of accident. He was working as a mason and was earning a sum of Rs.15,000/- per month. The appellants have examined PW2/co-worker of the deceased to prove his income. The Tribunal erroneously fixed meagre sum of Rs.4,500/- per month and has not granted any enhancement towards future prospects. The appellants are wife and children and the respondents 3 & 4 are parents of the deceased. The amounts awarded by the Tribunal towards loss of love and affection, loss of consortium, funeral expenses and transportation are meagre. The Tribunal has not awarded any amount towards loss of estate and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants failed to substantiate their contention that the deceased was earning a sum of Rs.15,000/- per month. In the absence of any material, the Tribunal has fixed a sum of Rs.4,500/- per month as notional income of the deceased. The Tribunal after considering all the materials available on record in proper



perspective, awarded compensation, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

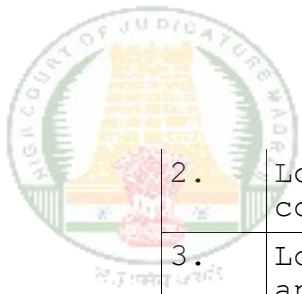
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5. Though notice was served on the 4th respondent and her name is printed in the cause list, there is no representation on behalf of her either in person or through counsel.

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

7. From the materials available on record, it is seen that the appellants have contended that the deceased was working as a mason and was earning a sum of Rs.15,000/- per month. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident is of the year 2005. The notional income fixed by the Tribunal is meagre. A sum of Rs.5,000/- per month is fixed as notional income of the deceased. The deceased was aged 30 years at the time of the accident. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The amount granted by the Tribunal towards loss of income is modified to Rs.11,42,400/- (Rs.5,000/- + 2000 (Rs.5,000/- x 40%) x 17 x 12 x 4/5). A sum of Rs.15,000/- and Rs.5,000/- granted by the Tribunal towards loss of consortium and funeral expenses are meagre and the same are enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and this Court awards a sum of Rs.15,000/- towards loss of estate. A sum of Rs.3,000/- granted by the Tribunal towards ambulance expenses is meagre and the same is enhanced to Rs.5,000/-. A sum of Rs.20,000/- awarded by the Tribunal towards loss of love and affection is meagre. This Court awards a sum of Rs.20,000/- each to the appellants 2 & 3 and respondents 3 & 4 towards loss of love and affection. 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	6,88,500	11,42,400	Enhanced



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2.	Loss of consortium	15,000	40,000	Enhanced
3.	Loss of love and affection to the appellants 2 & 3 and respondents 3 & 4	20,000	80,000	Enhanced
4.	Funeral expenses	5,000	15,000	Enhanced
5.	Ambulance expenses	3,000	5,000	Enhanced
6.	Loss of estate	-	15,000	Granted
	Total	Rs.7,31,500/- -, out of which, appellants are entitled to Rs.5,50,000/- and respondents 3 & 4 are entitled to Rs.1,81,500/-	Rs.12,97,400/- -, out of which, appellants are entitled to Rs.8,89,540/- and respondents 3 & 4 are entitled to Rs.4,07,860/-	Enhanced by Rs.5,65,900/- -

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,31,500/- is hereby enhanced to Rs.12,97,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are entitled to a sum of Rs.8,89,540/- and the respondents 3 and 4 are entitled to a sum of Rs.4,07,860/- as compensation. It is made clear that the appellants and respondents 3 & 4 are not entitled to any interest for the delay period on the amount enhanced by this Court. The appellants/claimants and respondents 3 & 4 are directed to pay necessary Court fee, if any, on the enhanced compensation. Both 1st respondent as well as 2nd respondent/Insurance Company are directed to deposit the award amount now determined by this Court along with interest and



costs jointly and severally, 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, 1st appellant, respondents 3 and 4 are permitted to withdraw their respective share of the award amount, on the basis of the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minors/2 & 3 appellants are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st appellant being the mother of the appellants 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1.The I Additional District Judge,
Motor Accidents Claims Tribunal,
Tindivanam.

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

+1cc to Mr.S.Partheeban, Advocate SR.No.28273

+1cc to Mr.J.Chandran, Advocate SR.No.29278

C.M.A.No.703 of 2018

SS (CO)
GMY (12/09/2019)