

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.4628 OF 2019

1.Srinivasan
2.Shanthi

.. Appellants

Vs.

1.Ravichandran
2.National Insurance Co. Ltd.,
having office at
No.751, Anna Salai,
Chennai 2.

... Respondents

(Since R1 remained exparte before Tribunal,
hence, dispensed with)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.04.2018 made in M.C.O.P.No.387 of 2013 on the file of IV Additional District Court, (Motor Accidents Claims Tribunal), Ponneri.

For Appellants: Mr.K.M.Ramesh

For R2 : Mrs.R.Sree Vidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 28.04.2018 made in M.C.O.P.No.387 of 2013 on the file of IV Additional District Court, (Motor Accidents Claims Tribunal), Ponneri.

2.The appellants are the claimants in M.C.O.P.No.387 of 2013 on the file of IV Additional District Court, (Motor Accidents Claims Tribunal), Ponneri. They filed the said claim petition, claiming a sum of Rs.9,00,000/- (amended to Rs.19,50,000/- vide order of this Court dated 25.10.2019 made in C.M.P.No.15448 of

2019 in C.M.A.SR.No.66922 of 2019) as compensation for the death of one K.Thangaraj, who died in the accident that took place on 11.01.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the Tractor belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.8,86,000/- as compensation to the appellants/claimants.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the deceased, aged 26 years at the time of accident, was working as Computer Mechanic and earning a sum of Rs.17,000/- per month. The Tribunal without considering the course certificate of Diploma in Desktop Publishing of the deceased, marked as Ex.P11, erroneously fixed a meagre sum of Rs.8,000/- per month as notional income of the deceased. The Tribunal has not awarded any amount towards transportation expenses, loss of expectations of life, future prospects and mental agony and damages. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, Mrs.R.Sree Vidhya, learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not produced any material evidence to prove that the deceased was earning a sum of Rs.17,000/- per month. In the absence of material evidence, the Tribunal has fixed a sum of Rs.8,000/- per month towards notional income of the deceased, which is not meagre. The appellants have not made out any case for enhancement towards future prospects. The compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the second respondent-Insurance Company and perused the entire materials on record.

8.From the materials on record, it is seen that the appellants have contended that the deceased was working as Computer Mechanic and was earning a sum of Rs.17,000/- per month. They failed to prove the same. In the absence of any material evidence to prove the income of the deceased, the Tribunal has fixed the notional income at Rs.8,000/- per month. The appellants have marked Certificate obtained by the deceased

for obtaining Diploma in Desktop Publishing as Ex.P11. The accident is of the year 2013. Considering the technical qualification of the deceased and the year of accident, the notional income is fixed at Rs.9,000/- per month. The deceased was aged 26 years at the time of accident. The Tribunal has not awarded any amount towards enhancement for future prospects. The appellants are entitled to 40% enhancement towards future prospects. The deceased being a bachelor at the time of accident, the deduction of 50% enhancement towards his personal expenses is proper. By applying the multiplier '17', the amount awarded by the Tribunal towards loss of dependency is modified to Rs.12,85,200/- {[Rs.9,000/- + Rs.3,600/- (40% of Rs.9,000/-)] x 12 x 17 x 1/2}. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they are 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	8,16,000/-	12,85,200/-	enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Loss of love and affection	40,000/-	40,000/-	confirmed
4.	Funeral expenses	15,000/-	15,000/-	confirmed
	Total	8,86,000/-	13,55,200/-	Enhanced by Rs.4,69,200/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.8,86,000/- is enhanced to Rs.13,55,200/- along with interest and costs. The 2nd respondent Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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.387 of 2013. On such deposit, the appellants are permitted to withdraw their share of the award amount, along with proportionate interest and costs, as per the ratio of apportionment fixed by

the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.4,69,200/-. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

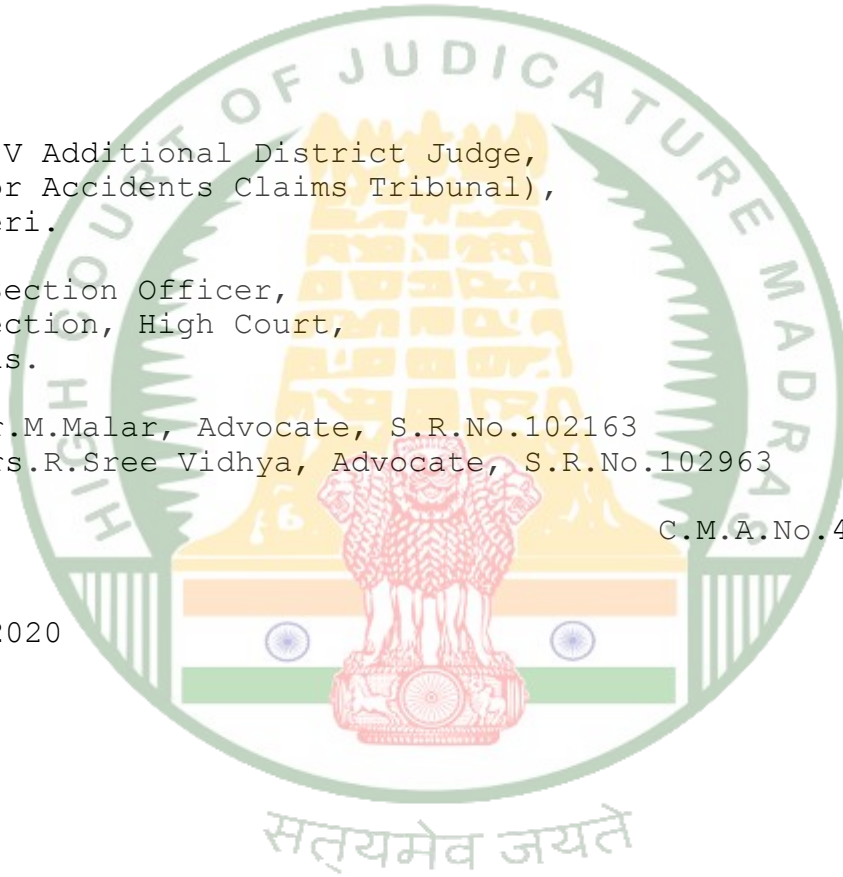
1. The IV Additional District Judge,
(Motor Accidents Claims Tribunal),
Ponneri.
2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.M.Malar, Advocate, S.R.No.102163

+1cc to Mrs.R.Sree Vidhya, Advocate, S.R.No.102963

C.M.A.No.4628 of 2019

RGN(CO)
CS/20/07/2020



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