

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1617 of 2017

1.Parvathi

2.Poongodi

.. Appellants / Petitioners

Vs.

1. Ambedraj

2. K.Somasundaram

3. TATA AIG Insurance Company Ltd,
Peninsula Corporate Park,
Piramal Tower, 9th Floor,
Ganpatrao Kadham Marg,
Lower Parel, Mumbai-400013.

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.07.2016 made in M.C.O.P.No.2126 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.S.P.Yuaraj

For R3 : Mr.S.Manohar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 05.07.2016 made in M.C.O.P.No.2126 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

2.The appellants are claimants in M.C.O.P.No.2126 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. They filed the above claim petition claiming a sum of Rs.40,00,000/- as compensation for the death of one Murugesan, who died in the accident that took place on 17.08.2013. 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 lorry belonging

to the 2nd respondent and directed the 3rd respondent/Insurance Company to pay a sum of Rs.12,07,000/- as compensation to the appellants/claimants. Not being satisfied with the award of the Tribunal made in M.C.O.P.No.2126 of 2013, the appellant has come out with the present appeal for enhancement of compensation.

3.The learned counsel appearing for the the appellants contended that the deceased was working as LIC Agent and he is an income tax assessee. The Tribunal erred in fixing meager sum of Rs.12,000/- per month as notional income while deceased was earning a sum of Rs.40,000/- per month. The deceased was aged 31 years at the time of accident. The appellants are entitled to 50% enhancement for future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

4.Per contra, Mr.S.Manohar, the learned counsel appearing for the 3rd respondent contended that the appellants have not filed sufficient document to prove the income of the deceased. The documents filed by the appellants did not prove the income of the deceased as claimed by the appellants. In the absence of such evidence, the notional income fixed by the Tribunal is not meager. The appellants are not entitled to any enhancement for future prospects as the deceased was working as LIC Agent. The amounts awarded by the Tribunal are not meagre and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellants as well as the 3rd respondent and perused all the materials available on record.

6.From the materials available on records, it is seen that the appellants claimed that the deceased was working as LIC Agent and was earning a sum of Rs.40,000/- per month. The learned counsel appearing for the appellants contended that the deceased was an income tax assessee and marked Ex.X2/Income Tax returns to show that the deceased has paid Rs.20,251/- as income tax for one year. P.W.3 deposed that the deceased was paid Rs.5,54,333/- as commission. P.W.3 has not stated whether any income tax was paid on this account. The appellants have not produced any material to show the expenses incurred by the deceased in his business as insurance agent. The Tribunal considering the above materials, fixed notional income of the deceased at Rs.12,000/- per month and the same is not meager. The deceased was 31 years at the time of accident. The Tribunal has not awarded any enhancement for future prospects. The

appellants are entitled to 40% towards future prospects. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.16,12,800/- {Rs.12,000/- + Rs.4,800/- (40% of Rs.12,000/-) X 12 X 16 X 50/100}. The Tribunal has awarded a sum of Rs.20,000/- towards love and affection to the mother of the deceased and the same is enhanced to Rs.40,000/-. A sum of Rs.25,000/- awarded towards funeral expenses is reduced to Rs.15,000/-. The Tribunal has not awarded any amount for loss of estate. A sum of Rs.15,000/- is granted for loss of estate. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the amounts awarded by the Tribunal are modified as follows:

SL No	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Loss of Future Earning Capacity	11,52,000/-	16,12,800/-	Enhanced
2.	Loss of love and affection for 1 st appellant	20,000/-	40,000/-	Enhanced
3.	Loss of love and affection for 2 nd appellant	10,000/-	10,000/-	Confirmed
4.	Funeral Expenses	25,000/-	15,000/-	Reduced
5.	Loss of Estate	-	15,000/-	Granted
	Total	Rs.12,07,000/-	Rs.16,92,800/-	Enhanced by Rs.4,85,800/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,07,000,- is hereby enhanced to Rs.16,92,800/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The 3rd respondent/Insurance Company is directed to deposit the enhanced award amount with interest now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of

receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to withdraw their respective share on the basis of apportionment fixed by the Tribunal award amount along with interest and cost, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gbi/rst

To

1. The Special District Judge,
Motor Accident Claims Tribunal,
Salem.

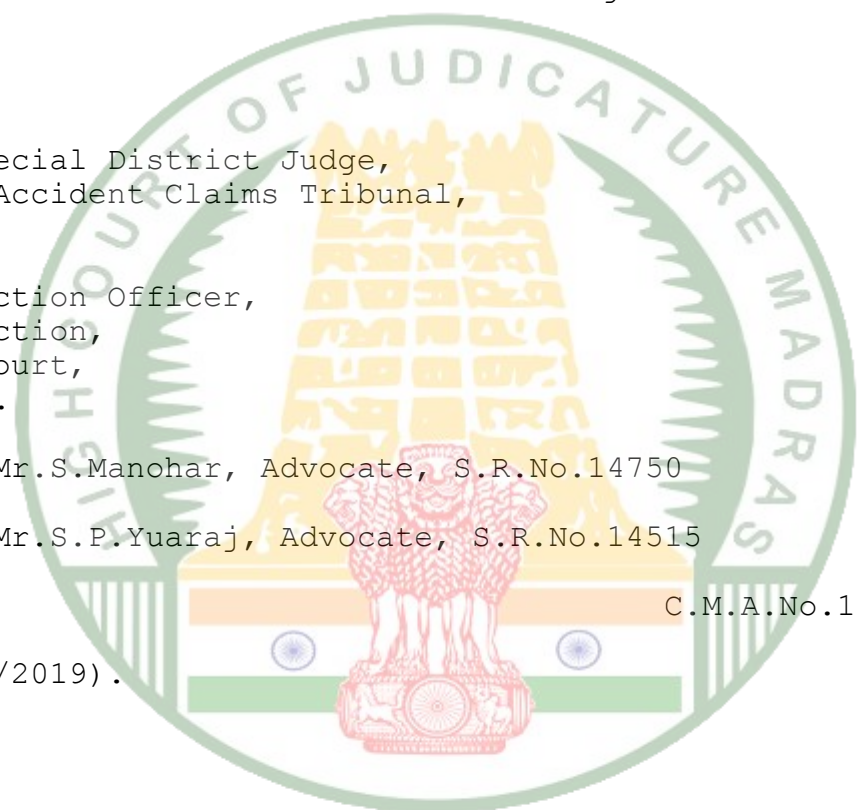
2. The Section Officer,
V.R.Section,
High Court,
Madras.

+1 cc to Mr.S.Manohar, Advocate, S.R.No.14750

+1 cc to Mr.S.P.Yuaraj, Advocate, S.R.No.14515

C.M.A.No.1617 of 2017

SVI (CO)
SSM(17/07/2019).

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red elephant. The entire emblem is set against a background of horizontal stripes in orange, white, and green. The words 'HIGH COURT OF JUDICATURE MADRAS' are written in a circular border around the emblem. Below the emblem, the motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

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