

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2477 of 2018 and 1679 of 2019
and C.M.P.No.5128 of 2019

C.M.A.No.2477 of 2018

1.M.Kaliammal
2.M.Madathy ... Appellants/Petitioners

Vs.

1.D.Muthuraj
2.The Manager,
United India Insurance Co. Ltd.,
No.2, Pattullas Road,
Chennai 600 002. ... Respondents/Respondents

C.M.A.No.1679 of 2019

The Manager,
United India Insurance Co. Ltd.,
No.2, Pattullas Road,
Chennai 600 002.

Now at,
United India Insurance Co. Ltd.,
Motor Third Party Claims Hub,
No.134, Sillingi Buildings, 4th Floor,
Greens Road, Chennai 6. ... Appellant /2nd Respondent

Vs.

1.M.Kaliammal
2.M.Madathy ... Respondents 1 & 2/Petitioners
3.D.Muthuraj ... 3rd Respondent/1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 13.12.2017, made in M.C.O.P.No.66 of 2015, on the file of the Special District Court, (Motor Accident Claims Tribunal-I), Thiruvallur.

(In C.M.A.No.2477/2018)

For Appellants : Ms.Ramya V. Rao
for M/s.A.N.Viswanatha Rao

For R2 : Mr.P.Sankaranarayanan

(In C.M.A.No.1679/2019)

For Appellant : Mr.P.Sankaranarayanan

For RR1 & 2 : Ms.Ramya V. Rao
for M/s.A.N.Viswanatha Rao

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the award dated 13.12.2017, made in M.C.O.P.No.66 of 2015, on the file of the Special District Court, (Motor Accident Claims Tribunal-I), Thiruvallur.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition.

4.The claimants filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one M.Akilandeswari who died in the accident that took place on 30.11.2010. Subsequently, by the order dated 11.07.2018 made in C.M.P.No.11723 of 2018 in C.M.A.SR.No.50987 of 2018, the claimants have amended the claim amount to Rs.27,00,000/-.

5.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 lorry belonging to the 1st respondent and insured with the 2nd respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.11,84,360/- as compensation to the claimants.

6.Against the said award dated 13.12.2017, made in M.C.O.P.No.66 of 2015, the 2nd respondent-Insurance Company has filed C.M.A.No.1679 of 2018 and claimants have filed C.M.A.No.2477 of 2018 for enhancement of the compensation.

7.The learned counsel appearing for the claimants contended that the deceased was working as a Computer Operator in Quick

Electricals and was earning a sum of Rs.11,000/- per month. The Tribunal erroneously fixed a sum of Rs.8,000/- per month as the notional income of the deceased. The deceased was aged 26 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The Tribunal has not granted any amount for loss of estate and prayed for enhancement of the compensation.

8. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the claimants have failed to prove the avocation and income of the deceased. The deceased was a spinster and the Tribunal erroneously deducted 1/3rd towards the personal expenses of the deceased, instead of deducting 50%. The amounts granted by the Tribunal for loss of love and affection is excessive and prayed for setting aside the award of the Tribunal.

9. Heard the learned counsel appearing for the claimants as well as the 2nd respondent and perused the materials available on record.

10. From the materials on record, it is seen that the claimants have contended that the deceased was working as a Computer Operator in Quick Electricals and was earning a sum of Rs.11,000/- per month. To prove the same, the claimants have examined P.W.3-employer of the deceased and marked Ex.P14-salary certificate. The Tribunal has rejected Ex.P14 on the ground that the deceased was working in the probationary period and no document was filed to prove the educational qualification. Considering the entire materials on record, the notional income of Rs.8,000/- fixed by the Tribunal is meagre and hence, the same is enhanced to Rs.10,000/- per month. The deceased was aged 26 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The deceased was a spinster. The Tribunal erroneously deducted 1/3rd towards the personal expenses of the deceased, instead of 50%. The amounts granted by the Tribunal for loss of income is modified to Rs.14,28,000/- {[Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-)] x 12 x 17 x ½}. The Tribunal failed to grant any amount towards loss of estate. The claimants are entitled to a sum of Rs.15,000/- towards loss of estate. The compensation granted by the Tribunal under other heads are just and reasonable and hence, they are hereby 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 income	10,89,360/-	14,28,000/-	enhanced
2.	Funeral expenses	15,000/-	15,000/-	confirmed
3.	Loss of love and affection	80,000/-	80,000/-	confirmed
4.	Loss of estate	-	15,000/-	granted
	Total	11,84,360/-	15,38,000/-	Enhanced by Rs.3,53,640/-

11. In the result, C.M.A.No.2477 of 2018 filed by the claimants is partly allowed and C.M.A.No.1679 of 2019 filed by the 2nd respondent-Insurance Company is dismissed. The amount awarded by the Tribunal at Rs.11,84,360/- is enhanced to Rs.15,38,000/- 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, 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.66 of 2015. On such deposit, the claimants are permitted to withdraw their share of 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. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

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To

1.The Special District Judge,
(Motor Accident Claims Tribunal-I),
Thiruvallur.

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

+2cc to M/s.A.N.Viswanatha Rao, Advocate Sr.38091
+1cc to Mr.P.Sankaranarayanan, Advocate Sr.38332

C.M.A.Nos.2477 of 2018 and 1679 of 2019
and C.M.P.No.5128 of 2019

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srg 22/10/2019



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