

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3130 of 2018

1.Maheswari

2.Tharan

3.Murugan

... Appellants/Petitioners

Vs.

1.Nallaiyan

2.The National Insurance Company Limited,
Represented by its Manager, 2nd Floor,
81-D, North Car Street,
Opp Bus Stand, Tiruchengode,
Namakkal District.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.08.2017 made in M.C.O.P.No.5 of 2016 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Ms.T.Gayathri

For RR2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 18.08.2017 made in M.C.O.P.No.5 of 2016 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellants are claimants in M.C.O.P.No.5 of 2016 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal. They filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for

the death of one Maharaja, who died in the accident that took place on 27.08.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.4,47,000/- as compensation to the appellants/claimants.

4.Not being satisfied with the award amount granted 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 was an agriculturist and was earning a sum of Rs.18,000/- per month. The Tribunal erroneously fixed notional income of the deceased at Rs.6,000/- per month and the Tribunal has not given any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6.Per contra, Mr.J.Chandran, learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not produced any material to show that deceased was an agriculturist and was earning a sum of Rs.18,000/- per month. In the absence of any materials, the notional income fixed by the Tribunal is not meager. The amounts awarded by the Tribunal under different heads are just compensation. The appellants have not made out any case for enhancement of compensation 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 entire materials available on record.

8.From the materials on record, it is seen that the appellants have contended that deceased was an agriculturist and was earning a sum of Rs.18,000/- per month. They failed to substantiate their contention with regard to avocation and income of the deceased and hence the Tribunal fixed notional income at Rs.6,000/- per month. The accident occurred in the year 2015. The amount fixed by the Tribunal as notional income of the deceased is meager and the same is enhanced to Rs.8,000/- per month. The age of the deceased was 60 years at the time of accident. The Tribunal applied correct multiplier of '9' and rightly deducted 1/3rd towards his personal expenses. The appellants have stated that the deceased was an agriculturist and appellants are continuing their cultivation. Hence, appellants are not entitled for any enhancement as they continue

to carry on their agricultural work and get their income from the agricultural land. A sum of Rs.5,000/- awarded by the Tribunal towards funeral expenses is hereby enhanced to Rs.15,000/- and a sum of Rs.5,000/- awarded by the Tribunal towards loss of consortium is enhanced to Rs.40,000/-. The amounts awarded by the Tribunal under other heads are confirmed. The amount awarded by the Tribunal towards loss of income is modified as follows:

$$\text{Rs.8,000/-} \times 12 \times 9 \times \frac{2}{3} = \text{Rs.5,76,000/-}$$

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	4,32,000/-	5,76,000/-	enhanced
2.	Loss of Estate	1,000/-	15,000/-	enhanced
3.	Funeral Expenses	5,000/-	15,000/-	enhanced
4.	Loss of Love and Affection	2,000/-	2,000/-	confirmed
5.	Transportation	2,000/-	2,000/-	confirmed
6.	Loss of Consortium	5,000/-	40,000/-	enhanced
	Total	Rs.4,47,000/-	Rs.6,50,000/-	enhanced by Rs.2,03,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,47,000/- is hereby enhanced to Rs.6,50,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court 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 are permitted to withdraw their respective share of the enhanced award amount as per the ratio of apportionment

fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

krk

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Namakkal.

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

+1cc to Mr.C.Kulanthaivel, Advocate, SR.No.10873

+1cc to Mr.J.Chandran, Advocate, SR.No.10861

C.M.A.No.3130 of 2018

Kak (26/06/2019)



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