

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2431 of 2018

1.Maresh

2.Minor. Kavin

3.Minor. K.Jaikumari

4.Rathinammal

5.Kasi

(Appellants 2 and 3/minors rep. by
their next friend/guardian mother/
1st appellant)

... Appellants

Vs.

1.G.V.Anandkumar

2.National Insurance Company Ltd,
CSX Towers, 684 Trichy Road,
Singanallur, Coimbatore.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.07.2018 made in M.C.O.P.No.100 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Mettur.

For Appellants : Mr.S.P.Yuaraj

For R2 : Mr.J.Chandran

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 17.07.2018 made in M.C.O.P.No.100 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Mettur.

2.The appellants are claimants in M.C.O.P.No.100 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court,

Mettur. The appellants filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Kumar, who died in the accident that took place on 15.04.2012. 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 bus belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said bus to pay a sum of Rs.7,73,400/- as compensation to the appellants. 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/claimants contended that the Tribunal failed to consider that the deceased was a taxi driver and was earning Rs.500/- per day and he can easily get a sum of Rs.15,000/- per month. The Tribunal erred in fixing a sum of Rs.6,000/- per month as notional income of the deceased. The deceased was aged 30 years at the time of the accident and the Tribunal ought to have granted enhancement towards future prospects. The amounts awarded by the Tribunal towards transportation, pain & suffering, loss of love & affection and loss of consortium are meagre. There are five claimants filed the claim petition and the Tribunal erroneously deducted 2/5th instead of 1/4th towards personal expenses and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that in the absence of any material evidence, the Tribunal has rightly fixed a sum of Rs.6,000/- per month as notional income of the deceased and the same is not to be interfered with. The Tribunal after considering both oral and documentary evidence 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.

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

6.From the materials available on record, it is seen that the appellants have contended that the deceased was a taxi driver and was earning a sum of Rs.10,000/- per month. They have failed to substantiate the said contention. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2012 and the notional income fixed by the Tribunal is meagre. This Court fixes a sum of Rs.9,000/- per

month as notional income of the deceased. The deceased was aged 30 years at the time of the accident. The Tribunal applied multiplier '17'. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. There are five claimants filed the claim petition. The Tribunal has erroneously deducted 2/5th instead of 1/4th towards personal expenses. The amount awarded by the Tribunal towards loss of income is modified to Rs.19,27,800/- (Rs.9,000/- + 3,600 (Rs.9,000/- x 40%) x 12 x 17 x 3/4). A sum of Rs.25,000/-, Rs.2,000/- and Rs.2,000/- awarded by the Tribunal towards loss of consortium, transportation and funeral expenses are meagre and the same are enhanced to Rs.40,000/-, Rs.5,000/- and Rs.15,000/- respectively. A sum of Rs.10,000/- granted by the Tribunal towards loss of love and affection is meagre and this Court awards a sum of Rs.40,000/- each towards loss of love and affection to the appellants 2 & 3 and Rs.25,000/- each towards loss of love and affection to the appellants 4 & 5. The Tribunal has not awarded any amount towards loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. 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	7,34,400	19,27,800	Enhanced
2.	Loss of consortium	25,000	40,000	Enhanced
3.	Transportation charges	2,000	5,000	Enhanced
4.	Funeral expenses	2,000	15,000	Enhanced
5.	Loss of love and affection to the appellants 2 & 3 Rs.40,000/- each and Rs.25,000/- each to the appellants 4 & 5	10,000	80,000 50,000	Enhanced

6.	Loss of estate	-	15,000	Granted
	Total	Rs.7,73,400/-	Rs.21,32,800/-	Enhanced by Rs.13,59,400 /-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,73,400/- is hereby enhanced to Rs.21,32,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 1st appellant being wife of the deceased is entitled to a sum of Rs.6,01,880/-, the appellants 2 and 3, being son and daughter of the deceased respectively are entitled to a sum of Rs.4,21,880/- each and the appellants 4 and 5, being parents of the deceased are entitled to a sum of Rs.343580/- each as compensation. 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. On such deposit, the appellants 1, 4 & 5 are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor appellants 2 & 3 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/-

सत्यमेव जयते
Assistant Registrar (CS III)

//True Copy//

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Sub Assistant Registrar

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To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Mettur.

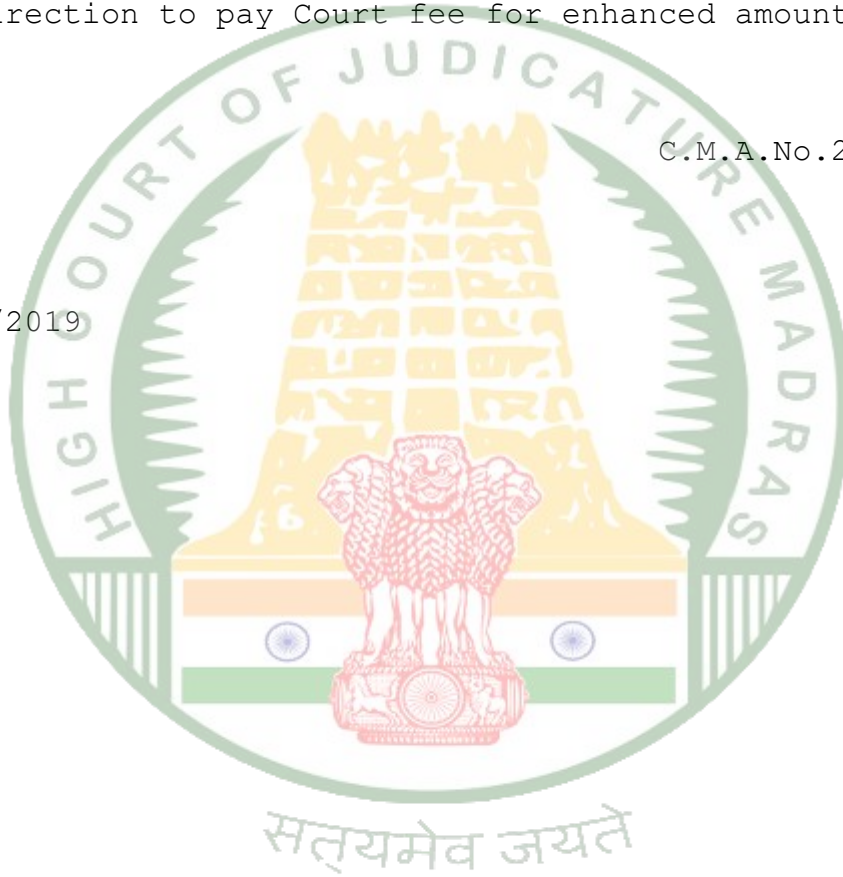
Copy to

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

+lcc to Mr.J.Chandran, Advocate Sr.41069
+lcc to M/S.S.P.Yuaraj, Advocate Sr.41104
(with a direction to pay Court fee for enhanced amount)

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srg 19/07/2019



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