

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1165 of 2013

1.P.Selvi
2.P.Revathi
3.P.Rajan
Kuppanna Gounder (died)

4.Kaliammal ... Appellants/Claimants 1-3 & 5

Vs.

1.S.Padma

2.United India Insurance Co. Ltd.

5B-1, Jagir Ussain salai
Salem road, Rasipuram town
Namakkal District.

(R1 set exparte before the Tribunal
and hence, notice dispensed with) ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.08.2009 made in M.C.O.P.No.937 of 2005 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.A.Sathishkumar
for Mr.C.Thangaraju

For R2 : Ms.I.Malar

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J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 24.08.2009 made in M.C.O.P.No.937 of 2005 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellants are claimants in M.C.O.P.No.937 of 2005 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal. They filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Ponnusamy, who died in the accident that took place on 02.09.2004.

3.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 stage carriage bus belonging to the 1st respondent and directed the 1st respondent as well as 2nd respondent/Insurance Company being insurer of the said bus to jointly and severally pay a sum of Rs.5,55,000/- as compensation to the appellants.

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 was aged 47 years, he was a business man, owning five lorries and was earning a sum of Rs.20,000/- per month. The Tribunal having accepted in paragraph-14 of the award erred in fixing only a sum of Rs.5,000/- per month as notional income of the deceased. There are five dependants of the deceased. The Tribunal ought to have deducted 1/4th instead of 1/3rd towards personal expenses of the deceased. The amounts awarded by the Tribunal towards loss of love and affection, funeral expenses and loss of consortium are meagre. The Tribunal has not awarded any amount towards loss of estate and prayed for enhancement of compensation.

6.The learned counsel appearing for the 2nd respondent/Insurance Company contended that it is the case of the appellants that the deceased was a business man, owning five lorries and was earning a sum of Rs.20,000/- per month. Even after the death of the deceased, the appellants can continue the business, as they are not totally deprived of entire income. The monthly income fixed by the Tribunal is not meagre. The total compensation awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

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

8.It is the contention of the appellants that the deceased was carrying on business through his five lorries and was earning a sum of Rs.20,000/- per month. The appellants have not produced any material to show that due to death of the deceased,

the entire business came to stand still and deprived of total income earned by the deceased. As rightly pointed out by the learned counsel appearing for the 2nd respondent/Insurance Company, the appellants can carry on the business by utilising the lorries and earn income. At the same time, the notional income fixed by the Tribunal is meagre. In view of the same, a sum of Rs.6,500/- per month is fixed as notional income of the deceased. The deceased was aged 47 years at the time of accident as per Ex.P4/Post-mortem certificate. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 25% enhancement towards future prospects. It is represented by the learned counsel appearing for the appellants that during pendency of the Civil Miscellaneous Appeal, the 4th appellant, mother of the deceased died. Now there are only three dependants of the deceased and hence 1/3rd deducted by the Tribunal towards personal expenses is not interfered with. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.8,45,000/- (Rs.6,500/- + 1625 [Rs.6,500/- X 25%] X 12 X 13 X 2/3). The Tribunal has awarded a sum of Rs.10,999/- towards loss of consortium and the same is not proper. The 1st appellant, wife of the deceased is entitled to a sum of Rs.40,000/- towards loss of consortium. The appellants 2 and 3 are daughter and son of the deceased. A sum of Rs.20,000/- awarded by the Tribunal towards loss of love and affection to the appellants 2 and 3 is meagre and hence, the same is hereby enhanced to Rs.20,000/- each. A sum of Rs.5,000/- awarded by the Tribunal towards funeral expenses is meagre and hence, the same is hereby enhanced to Rs.15,000/-. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded 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 or reduced
1.	Loss of dependency	5,20,000	8,45,000	Enhanced
2.	Loss of consortium	10,999	40,000	Enhanced
3.	Loss of love and affection to the appellants 2 to 5	20,000	40,000 (appellants 2 and 3)	Enhanced

4.	Funeral expenses	5,000	15,000	Enhanced
5.	Loss of estate	-	15,000	Granted
	Total	5,55,999 Tribunal awarded 5,55,000	9,55,000	Enhanced by Rs.4,00,000/ -

Though the Tribunal arrived at a sum of Rs.5,55,999/-, awarded only a sum of Rs.5,55,000/- as compensation to the appellants.

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,55,000/- is hereby enhanced to Rs.9,55,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. Out of the enhanced award amount, the 1st appellant being wife of the deceased is entitled to a sum of Rs.4,05,000/- and the appellants 2 and 3 being daughter and son of the deceased are entitled to a sum of Rs.2,75,000/- each as compensation. Both the respondents are jointly and severally 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 to 3 are permitted to withdraw their respective share of the award amount as per the apportionment fixed by this Court along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

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

Copy to:

The Section Officer
V.R. Section
High Court, Chennai.

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+2cc to Mr.C.Thangaraju, Advocate, S.R.No.32873
+1cc to Mrs.I.Malar, Advocate, S.R.No.33001

C.M.A.No.1165 of 2013

VBA (CO)
CB (30/04/2021)



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