



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1679 of 2020

1. Chinnakannu
2. Rani
3. Thiyagarajan
4. Venkatesan
5. Latha

.. Appellants/Petitioners

Vs.

1. N.Sasikumar
2. The Branch Manager,
United India Assurance Co. Ltd.,
Vellore. .. Respondents/Respondents
(R1-remained exparte before the Tribunal his
presence may be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 22.10.2018, made in M.C.O.P.No.384 of 2016, on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Vellore at Tirupattur.

For Appellants : Ms.M.Malar

For Respondent 2 : Mrs.R.Rathna Thara

J U D G M E N T

Not feeling satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, the appellants/claimants are before this Court with this appeal seeking enhancement of compensation.

2. The brief facts leading to the filing of this appeal are as follows:

(i) The deceased one Gopal is the husband of the first appellant and father of the appellants 2 to 5. The deceased was 65 years old at the time of the accident. He was an agriculturist and a real estate broker. At the time of the accident, he was earning a sum of Rs.20,000/- per month.



(ii) On 04.04.2016, at about 04.30 p.m., while he was riding in his two wheeler near Alangayam, Kavapattarai Village cross road, a mini lorry bearing registration No.TN-30-AW-7230, owned by the first respondent and insured with the second respondent / insurance company, came in a rash and negligent manner and dashed against the two wheeler of the deceased, in which he sustained fatal injuries and died on the way to the hospital. The appellants/claimants being the Legal Representatives of the deceased claiming a compensation of Rs.20,00,000/- has filed the claim petition before the Tribunal.

3. The first respondent remained ex parte. The second respondent / insurance company contested the claim petition stating that the accident had taken place due to the rash and negligent driving of the deceased himself and the liability cannot be fixed on the driver of the mini lorry and consequently the insurance company is not liable to pay compensation. So far as the monthly income of the deceased is concerned, the second respondent / insurance company contested that there is no proof as he was an agriculturist and doing real estate business. That apart, the insurance company has also contested the compensation sought by the appellants/claimants as highly excessive.

4. In order to prove the claim, the appellants/claimants examined two witnesses as P.Ws.1 and 2 and marked as many as seven documents as Exs.P1 to P7. On the side of the respondents no witness was examined and no document was marked.

5. The Tribunal after considering the materials available on record came to the conclusion that the accident took place due to the rash and negligent driving of the driver of the mini lorry and hence the respondents are liable to pay compensation. So far as the quantum of compensation is concerned, the Tribunal has held that there is no proof for age and hence based on the post mortem certificate fixed the age of the deceased as 70 years and fixed his monthly income at Rs.4,500/-. After deducting 1/4 towards personal expenses applying multiplier 5 arrived at the loss of income of the deceased at Rs.2,02,500/-. The Tribunal has awarded a sum of Rs.15,000/- towards funeral expenses; Rs.40,000/- towards loss of consortium; Rs.80,000/- towards love and affection and Rs.5,000/- towards transportation, thus, totalling a sum of Rs.3,42,500/- was awarded as compensation. Being aggrieved on the compensation awarded by the Tribunal at Rs.3,42,500/-, the appellants/claimants have filed the present appeal seeking enhancement.

6. I have heard the learned counsel on either side and also perused the records carefully.



7. According to the appellants/claimants the deceased was an agriculturist and was also doing real estate business. To prove the monthly income of the deceased, the appellants/claimants have examined P.W.1 and marked Ex.P7, the bank account book of the deceased. Considering all the above, the Tribunal fixed the monthly income of the deceased at Rs.4,500/-, however, considering the fact that there are evidence available to show that the deceased was earning substantial amount during his life time, this Court is of the view that a sum of Rs.5,000/- can be fixed towards his monthly income, and after deducting 1/4 towards his personal expenses his notional monthly income can be fixed at Rs.3,750/- (Rs.5,000 - Rs.1,250 = Rs.3,750). By applying multiplier of 5, loss of dependency will be Rs.2,25,000/-. Towards loss of estate a sum of Rs.15,000/- is now awarded. So far as other heads are concerned, the Tribunal has rightly granted compensation and there is no reason to interfere with the same.

8. In view of the above, the compensation awarded by the Tribunal is modified as follows:

Sl No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Loss of income (dependency)	2,02,500	2,25,000	Enhanced
2.	Funeral expenses	15,000	15,000	Confirmed
3.	Loss of consortium	40,000	40,000	Confirmed
4.	Love and affection	80,000	80,000	Confirmed
5.	Transportation	5,000	5,000	Confirmed
6.	Loss of Estate	-	15,000	Granted
	Total	3,42,500	3,80,000	Enhanced by Rs.37,500/-

9. Out of the total sum of Rs.3,80,000/- the first appellant/first claimant is entitled to a sum of Rs.3,00,000/-. Since the appellants 2 to 5 / claimants 2 to 5 are the married sons and daughters and they are living separately, they are entitled to the remaining sum of Rs.80,000/-.

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,42,500/- is hereby enhanced to Rs.3,80,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The second 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.384 of 2016, on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Vellore at Tirupattur. On such deposit of the enhanced compensation amount, now determined by this Court, the appellants/ claimants are permitted to withdraw the enhanced award amount now determined by this Court, as stated above, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar(CS-)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
III Additional District Judge,
Vellore at Tirupattur.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mrs.R.Rathna Thara, Advocate SR.No.37489

+1cc to Ms.M.Malar, Advocate SR.No.37205

C.M.A.No.1679 of 2020

CA(CO)
GMY(07/09/2021)