

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1289 of 2013

1.K.Jeyanthi
2.K.Vinoth (Minor)
3.K.Swathi (Minor)
4.N.Navaneethamal
5.M.Narayanasamy Appellants/Petitioners
Minors 2 & 3 rep by Mother
and Next Friend Jeyanthi.

..Vs..

1.A.S.Mani
2.National Insurance Co.Ltd.,
No.751, Mount Road, III Floor
Chennai-600 002. Respondents/Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.5306 of 2002, dated 30.07.2007 on the file of the Motor Accident Claims Tribunal and Additional District Judge, II Fast Track Court, Chennai.

For Appellant : Mr.K.A.Ravindran for
Mr. A.Shanmugaraj

For Respondents : Mr.D.Bhaskaran for R2
R1 - Exparte

JUDGMENT

(This Appeal has been taken up for hearing through Video Conferencing)

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 30.07.2007 passed by the Motor Accident Claims Tribunal/Additional District Judge, II Fast Track Court, Chennai, in M.C.O.P No.5306 of 2002.

2. Heard Mr.A.Shanmugaraj, learned counsel for the Appellants and Mr.D.Bhaskaran, learned counsel for the second respondent. The first respondent remained exparte both before the Tribunal as well as this Court.

3. A person, by name N.Kalayana Kumar died on 13.08.2002 as a result of an accident caused by a vehicle owned by the first respondent and insured with second respondent company. The Appellants are the legal representatives of the deceased and they have preferred a claim before the Motor Accident Claims Tribunal seeking compensation for the death of N.Kalyana Kumar, as a result of an accident caused by a vehicle insured with the second respondent.

4. The Motor Accident Claims Tribunal under the impugned award has directed the second respondent to pay the Appellants, a compensation of Rs.6,26,000/- together with interest and costs.

5. The Appellants/claimants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, have preferred this appeal.

6. The details of the compensation awarded by the Tribunal in favour of the Appellants/claimants are as follows:

Heads	Award Amount (Rs.)
Loss of dependency	5,76,000/-
Loss of Consortium	15,000/-
Loss of Expectation of life	15,000/-
Loss of Love and Affection	15,000/-
Funeral Expenses	5,000/-
Total	6,26,000/-

7. The Appellants/claimants in their claim petition had averred that the deceased N.Kalyana Kumar, aged 30 years was the Proprietor of MNR Bakery and Sweets and a STD booth and that he was earning Rs.5000/- per month at the time of the accident. The cause of the accident has not been disputed by the respondents as seen from the impugned award.

8. The only question that arises for consideration is whether the Appellants are entitled for enhancement of compensation or not?

9. Before the Tribunal, the Appellants/claimants filed 12 documents which were marked as Ex.P1 to Ex.P12 and three witnesses were examined on their side namely, K.Jeyanthi, the wife of the deceased as PW1 and Mr.Ravi, an eye witness to the accident as PW2 and Dr.Saichandran who examined the deceased as PW3.

10. Before the Tribunal, the Appellants/claimants have filed a rental agreement which was marked as Ex.P5, rental receipts which were marked as Ex.P6, tax receipts which were marked as Ex.P7, professional tax receipt which was marked as Ex.P8 and telephone bills which were marked as Ex.P9 and Ex.P10, telephone surrender and refund request letter which were marked as Ex.P11 series, in order to substantiate their claim that the deceased was running a bakery and a telephone booth. Since the Tribunal was not convinced with the genuineness of those documents, the Tribunal has assessed the monthly income of the deceased at Rs.3,000/- on notional basis. However, the respondents have not been able to disprove the contention of the Appellants/claimants that the deceased N.Kalyana Kumar was running a bakery and was also operating a STD booth. The Tribunal has assessed the notional monthly income of the deceased only based on the year of the accident. This Court has also perused the evidence and materials available on record. This Court does not find any admission on the part of PW1, the wife of the deceased during her cross examination by the respondents that the deceased was not running a bakery and a STD booth. The only evidence as seen from the deposition of PW1 is that the name of the deceased is not found in Ex.P7 and Ex.P8, namely the tax receipt as well as the professional tax receipt. This being the case, the respondents have also not been able to conclusively establish before the Tribunal that the deceased N.Kalyana Kumar was not running a bakery and a STD booth. Only for an ordinary labourer, the assessment of monthly income made by the Tribunal under the impugned award at Rs.3000/- will be a correct assessment. But, in the instant case where the Appellants have pleaded that the deceased was running a bakery as well as a STD booth which has also been adduced by PW1 in her oral evidence and when there is no contra evidence to disprove the said contention, this Court is of the considered view that the assessment of notional monthly income of the deceased at Rs.3000/- is low. This Court is of the considered view that the correct assessment will have to be Rs.3,500/- per month and not Rs.3000/- fixed by the Tribunal. Accordingly, the loss of dependency is modified from Rs.5,76,000/- to

Rs.7,05,600/- as detailed below:

$$3500 + 40\% \times \frac{1}{4} \times 12 \times 16 = \text{Rs.7,05,600/-}$$

11. Insofar as the quantum of compensation awarded by the Tribunal under the heads loss of consortium, loss of expectation of life, loss of love and affection and funeral expenses awarded by the Tribunal are concerned, the same is a just compensation in the considered view of this Court.

12. For the forgoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.6,26,000/- to Rs.7,55,600/- in the following manner.:

Heads	Amount awarded by the Tribunal	Award Amount (Rs.)
Loss of dependency	5,76,000/-	7,05,600/-
Loss of Consortium	15,000/-	15,000/-
Loss of expectation of life	15,000/-	15,000/-
Loss of love and affection	15,000/-	15,000 /-
Funeral expenses	5,000/-	5,000/-
Total	6,26,000/-	7,55,600/-

Conclusion:

13. In the result, this appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The second Respondent/Insurance Company is directed to deposit the modified amount i.e, Rs.7,55,600/- along with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.5306 of 2002 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount along with accrued interest to the bank accounts of the first, fourth and fifth appellants/claimants through RTGS within a period of two weeks thereafter. Since the Appellants 2 and 3 are minors, their respective shares of award award shall be deposited bearing fixed deposit in any one of the nationalised banks till they attain majority. The first Appellant/mother of the minors

are permitted to withdraw the interest once in six months for the welfare of the minors. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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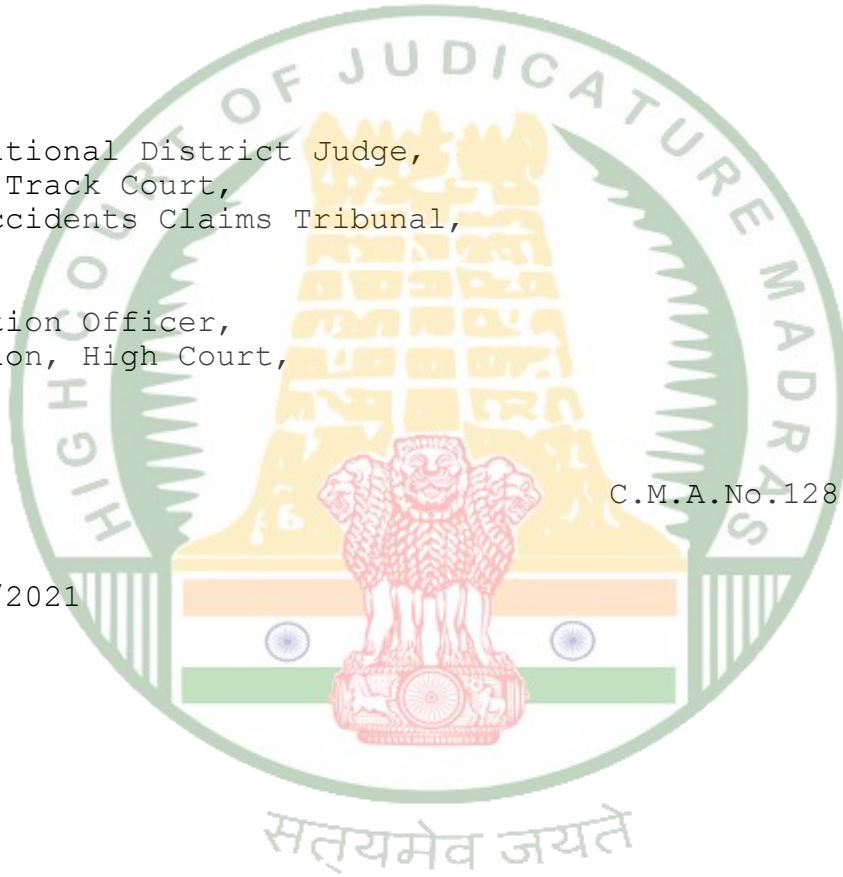
To

1.The Additional District Judge,
II Fast Track Court,
Motor Accidents Claims Tribunal,
Chennai.

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

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