

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1220 of 2015

1.C.Susila
2.C.Vasu
3.S.Malathi
4.V.Devika

.. Appellants

Vs.

1.Mathi @ Rajagopal
2.The Divisional Manager,
National Insurance Company Limited,
D.O.No.110, Jawaharlal Nehru Street,
Puducherry - 605 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.12.2012 made in M.C.O.P.No.1702 of 2009 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Cuddalore.

For Appellants : Mr.D.Baskar

For R2 : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted in the award dated 13.12.2012 made in M.C.O.P.No.1702 of 2009 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Cuddalore.

2.The appellants are the claimants in M.C.O.P.No.1702 of 2009 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Cuddalore. They filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one D.Chinnaraj, who died in the accident that

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took place on 13.03.2009.

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 van belonging to the 1st respondent and directed the respondents 1 and 2, being the owner and insurer of the van to pay a sum of Rs.5,38,155/- 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 55 years and was working as Foreman at Venkateswara Navakumar Rice Mill and was earning a sum of Rs.10,000/- per month at the time of accident. To prove the same, the appellants examined P.W.4/Manager of the said Rice Mill and also produced Ex.P18/salary slip. But the Tribunal rejected the evidence of P.W.4 and Ex.P18 and fixed a meagre sum of Rs.5,000/- per month as notional income of the deceased. The Tribunal ought to have fixed a sum of Rs.10,000/- per month as notional income of the deceased. The Tribunal has not awarded any amount towards loss of estate. The amounts awarded by the Tribunal towards funeral expenses, loss of love and affection and loss of consortium are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that a sum of Rs.5,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal considering entire materials on record, has awarded a sum of Rs.5,38,155/- as compensation to the appellants, which is not meagre. 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 learned counsel appearing for the 2nd respondent-Insurance Company and perused entire materials on record.

8.It is the contention of the appellants that the deceased was aged 55 years and was working as Foreman at Venkateswara Navakumar Rice Mill and was earning a sum of Rs.10,000/- per month at the time of accident. To prove the same, the appellants examined P.W.4/Manager of the said Rice Mill and also produced Ex.P18/salary slip. But the Tribunal rejected the evidence of

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P.W.4 and Ex.P18. From the award passed by the Tribunal it is seen that the appellants have not filed any Attendance Register and other documents to prove that the deceased was working as Foreman at Venkateswara Navakumar Rice Mill and earning a sum of Rs.10,000/- per month at the time of accident. In view of the same, the rejection of evidence of P.W.4 and Ex.P18 by the Tribunal is valid. The Tribunal fixed a sum of Rs.5,000/- per month as notional income of the deceased. The accident occurred in the year 2009 and the monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.7,500/- per month is fixed as notional income of the deceased. The appellants contended that the deceased was aged 55 years at the time of accident. But, in Ex.P11/discharge summary, the age of the deceased was mentioned as 65 years. Therefore, the Tribunal fixed the age of the deceased as 65 years and adopted multiplier '7' and deducted 1/4th towards personal expenses of the deceased. By fixing monthly income at Rs.7,500/-, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.4,72,500/- {Rs.7,500/- X 12 X 7 X 3/4}. The Tribunal has awarded a meagre sum of Rs.10,000/- towards loss of consortium to the 1st appellant and Rs.5,000/- towards funeral expenses. Hence, the same are enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal towards loss of love and affection and medical expenses are just and reasonable and hence, the same are confirmed.

9. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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 dependency	3,15,000/-	4,72,500/-	Enhanced
2.	Loss of consortium to the 1 st appellant	10,000/-	40,000/-	Enhanced

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
3.	Loss of love and affection to the appellants 2 to 4	40,000/-	40,000/-	Confirmed
4.	Funeral expenses	5,000/-	15,000/-	Enhanced
5.	Medical expenses	1,68,155/-	1,68,155/-	Confirmed
6.	Loss of estate	-	15,000/-	Granted
	Total	Rs.5,38,155/-	Rs.7,50,655/-	enhanced by Rs.2,12,500/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.5,38,155/- is hereby enhanced to Rs.7,50,655/- 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 the necessary Court fee on the enhanced amount of compensation now determined by this Court. The respondents 1 and 2 are 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.1702 of 2009 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Cuddalore. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

1. The I Additional District Judge,
Motor Accident Claims Tribunal,
Cuddalore.

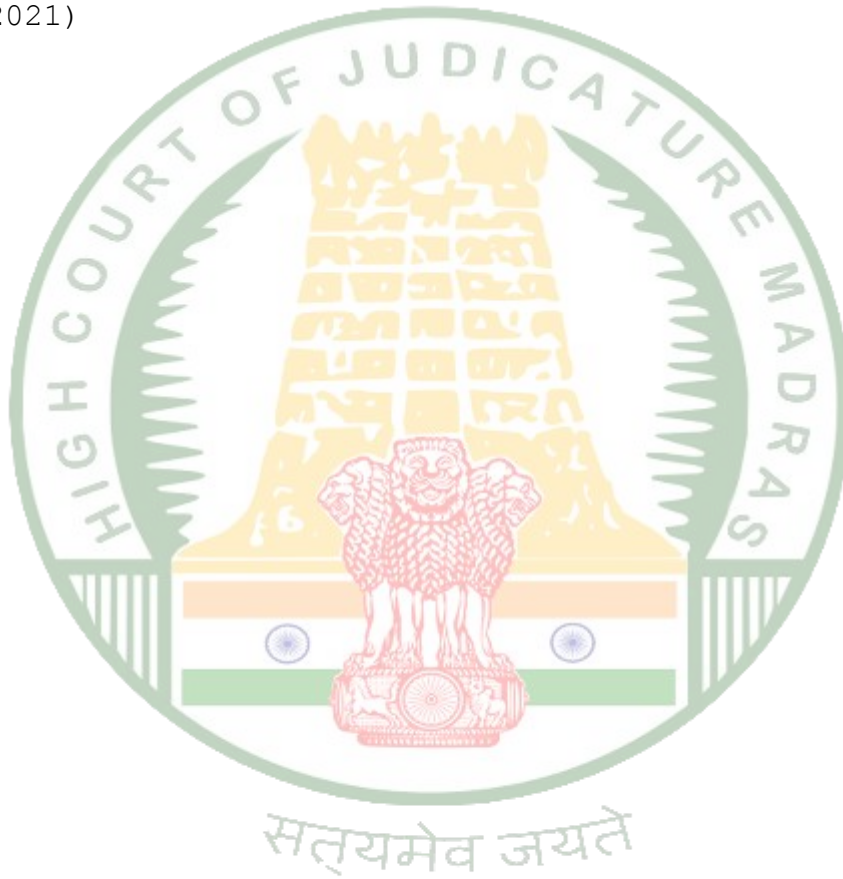
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2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.D.Baskar, Advocate SR.17284
+1cc to Mr.S.Arunkumar, Advocate SR.17344

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