

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.708 of 2020

1.Singaram

2.Raghuraman

3.Gayathiri

4.Nathiya .. Appellants/Peitioners

Vs.

1.P.Lakshmi

2.United India Insurance Co. Ltd.
Represented by its Divisional Manager
office at TKM complex
Katpadi road, Vellore Town.

3.R.Indira

4.The Oriental Insurance Co. Ltd.
Represented by its Divisional Manager
Office at Jambubala complex
Arcot road, Vellore Town. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.03.2019 made in M.C.O.P.No.183 of 2016 on the file of Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellants : Mr.R.Nalliyappan
For R2 : Mr.P.Sankaranarayanan
For R4 : Mrs.R.Sreevidhya

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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 22.03.2019 made in M.C.O.P.No.183 of 2016 on the file of Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

2.The appellants are claimants in M.C.O.P.No.183 of 2016 on the file of Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore. They filed the said claim petition claiming a sum of Rs.45,00,000/- as compensation for the death of one S.Malliga, who died in the accident that took place on 15.09.2014.

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 Mahindra van belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said van to pay a sum of Rs.10,17,500/- as compensation to the appellants and dismissed the claim petition as against the respondents 3 & 4, who are owner & insurer of the motorcycle respectively.

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 44 years at the time of accident, she was a construction worker and was earning a sum of Rs.15,000/- per month. The appellants have examined P.W.2, Improved Superintendent, to prove that the deceased was a member of a construction labour department. The Tribunal without properly appreciating the same, fixed only a meagre sum of Rs.6,000/- per month as notional income of the deceased. The Tribunal has not awarded any compensation towards loss of estate and mental agony. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not produced any document to prove the income of the deceased. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased, which is not meagre. The Tribunal after considering all the materials available on

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record, awarded just compensation. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.The learned counsel appearing for the 4th respondent/Insurance Company contended that the Tribunal dismissed the claim petition as against the respondents 3 & 4. The respondents 3 and 4 are not necessary parties to the appeal and prayed for dismissal of the appeal as against the 4th respondent/Insurance Company.

8.Heard the learned counsel appearing for the appellants as well as the respondents 2 & 4/Insurance Companies and perused the entire materials available on record.

9.It is the contention of the appellants that the deceased was aged 44 years at the time of accident, she was a construction worker and was earning a sum of Rs.15,000/- per month. The appellants have examined P.W.2, Improved Superintendent, who has deposed that the deceased was a member of a construction labour welfare department. But the appellants failed to prove that the deceased was earning a sum of Rs.15,000/- per month. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2014 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.11,000/- per month is fixed as notional income of the deceased. As per Ex.P8/Post-mortem certificate, the deceased was aged 48 years at the time of accident. The Tribunal applied multiplier '13', granted 25% enhancement towards future prospects and deducted 1/4th towards personal expenses, which are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.16,08,750/- (Rs.11,000/- + 2750 [Rs.11,000/- X 25%] X 12 X 13 X 3/4). 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. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are confirmed.

10.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have 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:

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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	8,77,500	16,08,750	Enhanced
2.	Loss of love and affection	75,000	75,000	Confirmed
3.	Loss of consortium	40,000	40,000	Confirmed
4.	Funeral expenses	15,000	15,000	Confirmed
5.	Transportation	10,000	10,000	Confirmed
6.	Loss of estate	-	15,000	Granted
	Total	10,17,500	17,63,750	Enhanced by Rs.7,46,250/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.10,17,500/- is hereby enhanced to Rs.17,63,750/- 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. 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 if any, already deposited by them, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. This appeal is dismissed as against the respondents 3 and 4. No costs.

Sd/-

Assistant Registrar (CS-II)

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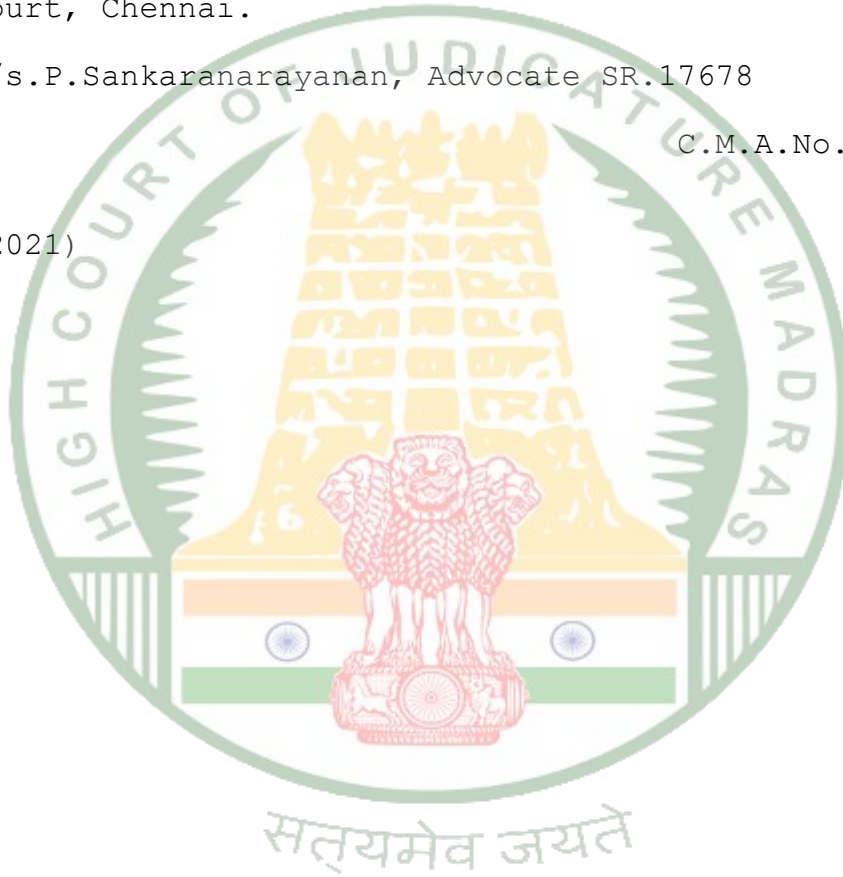
1.The Motor Accident Claims Tribunal,
The I Additional District and Sessions Judge,
Vellore.

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

+1cc to M/s.P.Sankaranarayanan, Advocate SR.17678

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