

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1167 of 2012

1.D.Indharani

2.Minor. Elavarasan

3.Minor. Kathirvel

(Minor appellants 2 and 3 are represented by their next friend, mother D.Indharani, 1st appellant herein) .. Appellants/Claimants 1 to 3

Vs.

1.A.Srinivasan

(R1 remained exparte before the Tribunal. Hence, notice to R1 dispensed with)

2.T.Udayakumar

3.The Branch Manager,
United India Insurance Company Limited,
Muthaiah Complex 2nd Floor,
No.1170, Mettur Road,
Erode.

4.Saminathan

5.Vasanthi

6.Minor. Anudevi

(Minor 6th respondent represented by her next friend, Mother Vasanthi, 5th appellant herein)

...Respondents 1 to 6/Respondents

7.D.Thangamani

8.Minor. Sapthagiri
(Minor 8th respondent represented by his next
friend, Mother Thangamani, 7th appellant herein)

.. Respondents7 to 8/Claimants4 & 5

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.10.2011 made in M.C.O.P.No.157 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai.

For Appellants : Mr.S.Kaithamalai Kumaran

For R3 : Mr.M.J.Vijayaraghavan

For RR 4 & 7 : No appearance

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 20.10.2011 made in M.C.O.P.No.157 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai.

3.The appellants are the petitioners 1 to 3 in M.C.O.P.No.157 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai. The appellants along with respondents 7 and 8 filed the above said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Devarajan, who died in the accident that took place on 25.03.2010.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the minidor auto belonging to the 2nd respondent and directed the respondents 1 to 3, being the driver, owner and insurer of the minidor auto to jointly and severally pay a sum of Rs.6,23,000/- as compensation to the appellants and respondents 7 and 8.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

6.The learned counsel appearing for the appellants contended that the deceased was a Cooking Contractor and was earning a sum of Rs.25,000/- per month. The Tribunal erroneously fixed meagre sum of Rs.4,500/- per month as notional income of the deceased. The deceased was aged 33 years at the time of accident and the Tribunal failed to grant any enhancement towards future prospects. The Tribunal failed to consider the total number of dependants of the deceased and erred in deducting 1/3rd towards personal expenses from the income of the deceased. The Tribunal ought to have deducted 1/5th of the income of the deceased towards personal expenses. The appellants and respondents 4 to 8 are dependants of the deceased and they are entitled to get compensation as per their status. The Tribunal erred in directing the appellants and respondents 4 to 8 to obtain necessary order under Hindu Succession Act. The first appellant is the first wife of the deceased and there is no dispute between the parties about the children of the deceased. Under such circumstances, the Tribunal ought to have apportioned the award in favour of the legal heirs of the deceased instead of directing them to obtain Succession certificate from competent Civil Court. Motor Vehilces Act is a beneficial legislation and meant for speedy disposal of the claims made by the claimants. The learned counsel appearing for the appellants further contended that the amounts awarded under conventional heads are meagre and prayed for enhancement of compensation and for apportioning the award amout between appellants and respondents 4 to 8.

7.Per contra, Mr.M.J.Vijayaraghavan, learned counsel appearing for the 3rd respondent-Insurance Company contended that appellants and respondents 4 to 8 failed to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, the notional monthly income fixed by the Tribunal is not meagre. The total compensation awarded by the Tribunal is not meagre and the appellants have not made out any case for enhancement of compensation. He further contended that there is a dispute between the appellants and the respondents 4 to 8 with regard to status of their claim. In view of the same, the Tribunal rightly directed the 3rd respondent to deposit the amount before the Tribunal and directed the appellants and respondents 4 to 8 to approach the competent Court under Hindu Succession Act. There is no error in the award of the Tribunal warranting interference by this Court and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 3rd respondent-Insurance Company and perused the entire materials on record.

9. From the materials available on record, it is seen that the appellants and respondents 7 and 8 filed the claim petition against the respondents 1 to 6. The appellants and respondents 7 to 8 in the claim petition has stated that first appellant is the first wife, 7th respondent is the second wife of the deceased and appellants 2 and 3 are the children through first appellant, 8th respondent is son of 7th respondent through the deceased. The 4th respondent is father of the deceased, the 5th respondent is concubine of the deceased and 6th respondent is born to the 5th respondent. According to appellants, appellants and respondents 4 to 8 are dependants on the deceased and all are entitled to get compensation for the death of the said Devarajan. On the other hand, the contention of the respondents 4 and 5 is that the deceased divorced the first appellant and 7th respondent and married the 5th respondent. The deceased was living along with respondents 4 to 6. The appellants and respondents 7 to 8 are living separately. In view of this rival contention, the Tribunal did not apportion the amounts awarded and directed the parties to obtain appropriate order under Hindu Succession Act. The said direction is erroneous. Once it is proved that parties are dependents on the deceased, they are entitled to receive compensation. In the present case, the respondents 4 to 6 contended that deceased divorced the first appellant as well as 7th respondent and married the 5th respondent. The deceased was living along with respondents 4 to 6 and the appellants and respondents 7 and 8 are living separately. The respondents 4 to 6 failed to produce any documents to show that deceased divorced the first appellant and 7th respondent and they are living separately along with their children. In the absence of any such records, the appellants and respondents 4 to 8 are dependents on the deceased and they are entitled to get compensation. Considering the entire materials on record, I hold that the appellants, respondents 5 and 6, respondents 7 and 8 are entitled to get 30% each of the compensation awarded and 4th respondent is entitled to receive 10% of compensation awarded.

10. As far as quantum of compensation is concerned, it is the contention of the appellants and respondents 7 and 8 that the deceased was a Cooking Contractor and was earning a sum of Rs.25,000/- per month. They failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident occurred in the year 2010 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident and nature of work done by the deceased, a sum of Rs.8,000/- per month is fixed as notional income of the deceased. The deceased was aged 33 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects of the deceased. The appellants and respondents 4 to 8 are entitled to 40%

enhancement towards future prospects. There are 8 dependents on the deceased and the Tribunal erroneously deducted 1/3rd instead of deducting 1/5th towards personal expenses of the deceased. In view of the above, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.17,20,320/- {Rs.11,200/- [(Rs.8,000/- + Rs.3,200/- (40% of Rs.8,000/-)] X 12 X 16 X 4/5}. The Tribunal has not awarded any amount towards loss of consortium and loss of estate. Hence, a sum of Rs.40,000/- and Rs.15,000/- are awarded towards loss of consortium and loss of estate respectively. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are meagre and the same are enhanced to Rs.40,000/- and Rs.15,000/- respectively. The amounts awarded by the Tribunal towards transportation and damages to clothes are just and reasonable and hence, the same are hereby confirmed.

11.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:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	5,76,000/-	17,20,320/-	Enhanced
2.	Loss of love and affection	30,000/-	40,000/-	Enhanced
3.	Funeral expenses	10,000/-	15,000/-	Enhanced
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Damages to clothes	2,000/-	2,000/-	Confirmed
6.	Loss of consortium	-	40,000/-	Granted
7.	Loss of estate	-	15,000/-	Granted
	Total	Rs.6,23,000/-	Rs.18,37,320/- rounded off to Rs.18,37,400/-	enhanced by Rs.12,14,400/-

12.In the result,

(i) This Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.6,23,000/- is hereby

enhanced to Rs.18,37,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants and respondents 4 to 8 are directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court.

(ii) The respondents 1 to 3 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, to the credit of M.C.O.P.No.157 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai.

(iii) Out of the enhanced award amount, the appellants are entitled to a sum of Rs.1,83,740/- each, respondents 5 and 6 as well as respondents 7 and 8 are entitled to a sum of Rs.2,75,610/- each and the 4th respondent is entitled to a sum of Rs.1,83,740/- as compensation.

(iv) The 1st appellant as well as respondents 4, 5 and 7 are permitted to withdraw their respective share of the enhanced award amount as per the ratio of apportionment fixed by this Court, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal.

(v) The share of the minor appellants 2 and 3 and respondents 6 and 8 are directed to be deposited in any one of the Nationalized Banks, till the minors attain majority.

(vi) On such deposit, the 1st appellant, being the mother of the minor appellants 2 and 3, the 5th respondent, being the mother of the minor 6th respondent and the 7th respondent, being the mother of the minor 8th respondent are permitted to withdraw the respective accrued interest once in three months for the welfare of the minors. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Perundurai. .

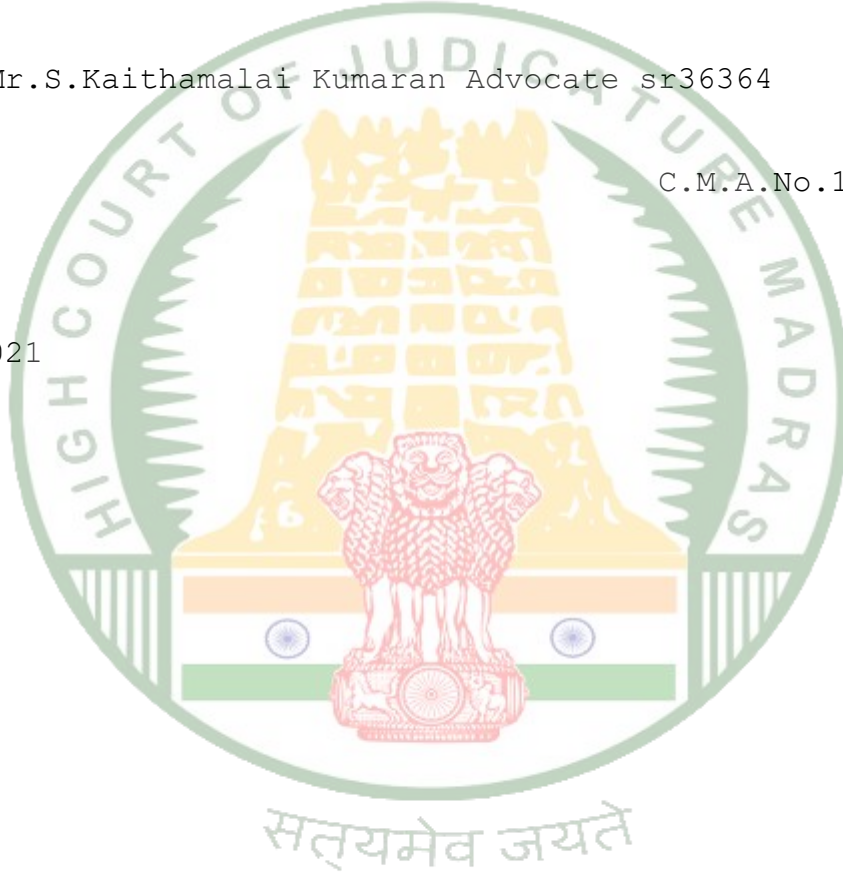
Copy to

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

+1 cc to Mr.S.Kaithamalai Kumaran Advocate sr36364

C.M.A.No.1167 of 2012

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