

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1599 of 2012

1.Chandran

2.C.Prabha

.. Appellants/Petitioners

Vs.

1.U.Enkels

2.R.M.Singathurai

3.Cholamandalam,

M/s.General Insurance Company Limited,
No.435, D.B.Road, R.S.Puram,
Coimbatore - 641 002.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.07.2011 made in M.C.O.P.No.536 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.I, Coimbatore.

For Appellants : Mr.K.Krishnan
for Mr.A.Sivaji
For R1 : No appearance
For R3 : Mr.E.Rajadurai
for Mr.M.B.Gopalan

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 13.07.2011 made in M.C.O.P.No.536 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.I, Coimbatore.

3.The appellants are the claimants in M.C.O.P.No.536 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.I, Coimbatore. They filed the above said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the death of their son viz., Pradeepkumar, who died in the accident that took place on 29.07.2008.

4.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 car belonging to the 2nd respondent and directed the 3rd respondent-Insurance Company, being the insurer of the car to pay a sum of Rs.3,92,500/- as compensation to the appellants.

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

6.The learned counsel appearing for the appellants contended that the deceased was working as Machine Operator in Geometric Machining Solutions and was earning a sum of Rs.8,500/- per month. The appellants produced Exs.P12, P14 and examined P.W.3, Supervisor of the employer of the deceased and proved the avocation and income of the deceased. The Tribunal without any reason erroneously fixed notional income of the deceased at Rs.3,000/- per month and deducted 1/3rd towards personal expenses of the deceased. The deceased was aged 19 years at the time of accident. The Tribunal failed to grant any enhancement towards future prospects and awarded compensation for loss of dependency. The amounts awarded by the Tribunal towards loss of love and affection, funeral expenses and transportation are meagre. The Tribunal has not awarded any amount towards loss of estate and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the 3rd respondent-Insurance Company appointed an investigator and investigated the matter and filed Exs.R1 to R5 to show that deceased received only a sum of Rs.2,000/- as monthly income. In Ex.R3/salary voucher, it was mentioned that deceased received only a sum of Rs.2,000/- per month. The Tribunal considering Exs.P12, P14 and Exs.R1 to R5, fixed notional income of the deceased at Rs.3,000/- per month, which is not meagre. The deceased was a bachelor at the time of accident but the Tribunal erroneously deducted 1/3rd instead of deducting ½ towards personal expenses of the deceased. The amounts awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

9.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 3rd respondent-

Insurance Company and perused entire materials on record.

10. It is the contention of the appellants that their deceased son was aged 19 years at the time of accident and was working as Machine Operator in Geometric Machining Solutions and was earning a sum of Rs.8,500/- per month. To substantiate the same, they have examined P.W.3, the Supervisor of employer of the deceased and marked Exs.P11 to P14. As per Ex.P12, the basic salary of the deceased was mentioned as Rs.6,400/-, House Rent Allowance Rs.1,000/- and Rs.500/- as miscellaneous expenses. In Ex.P14/copy of salary voucher, it was mentioned that deceased received a sum of Rs.7,500/- per month. The 3rd respondent marked Exs.R1 to R5. In Ex.R3/salary voucher, it was mentioned that deceased received a sum of Rs.2,000/- per month. The Tribunal considering the evidence and documents filed by the appellants as well as 3rd respondent-Insurance Company, did not accept the salary certificate and fixed notional income of the deceased at Rs.3,000/- per month. The accident occurred in the year 2008 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.6,500/- per month is fixed as notional income of the deceased. The deceased was aged 19 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects of the deceased. The Tribunal erroneously applied multiplier '15' taking into consideration the age of the parents of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2017 ACJ 2700 / 2017(2)TNMAC 609 (SC), [National Ins. Co. Vs. Pranay Sethi], the age of the deceased is the basis for adopting multiplier. The deceased was aged 19 years at the time of accident and the correct multiplier applicable is '18'. The deceased was a bachelor at the time of accident and the Tribunal deducted 1/3rd towards personal expenses of the deceased and the same is not correct. 50% has to be deducted towards personal expenses of the deceased. After deducting 50% towards personal expenses and by applying multiplier '18', the amount awarded by the Tribunal towards loss of dependency is modified to Rs.9,82,800/- {Rs.9,100/- [Rs.6,500/- + Rs.2,600/- (40% of Rs.6,500/-)] X 12 X 18 X ½}. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are meagre and hence the same are enhanced to Rs.80,000/- and Rs.15,000/- towards loss of love & affection and funeral expenses 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 transportation, medical expenses and damages to clothes are just and reasonable and hence, the same are 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	3,60,000/-	9,82,800/-	Enhanced
2.	Loss of love and affection	10,000/-	80,000/-	Enhanced
3.	Funeral expenses	5,000/-	15,000/-	Enhanced
4.	Transportation	2,500/-	2,500/-	Confirmed
5.	Medical expenses	14,000/-	14,000/-	Confirmed
6.	Damages to clothes	1,000/-	1,000/-	Confirmed
7.	Loss of estate	-	15,000/-	Granted
	Total	Rs.3,92,500/-	Rs.11,10,300/-	enhanced by Rs.7,17,800/-

12. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,92,500/- is hereby enhanced to Rs.11,10,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd 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.536 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.I, Coimbatore. 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. The appellants are directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar

krk

To

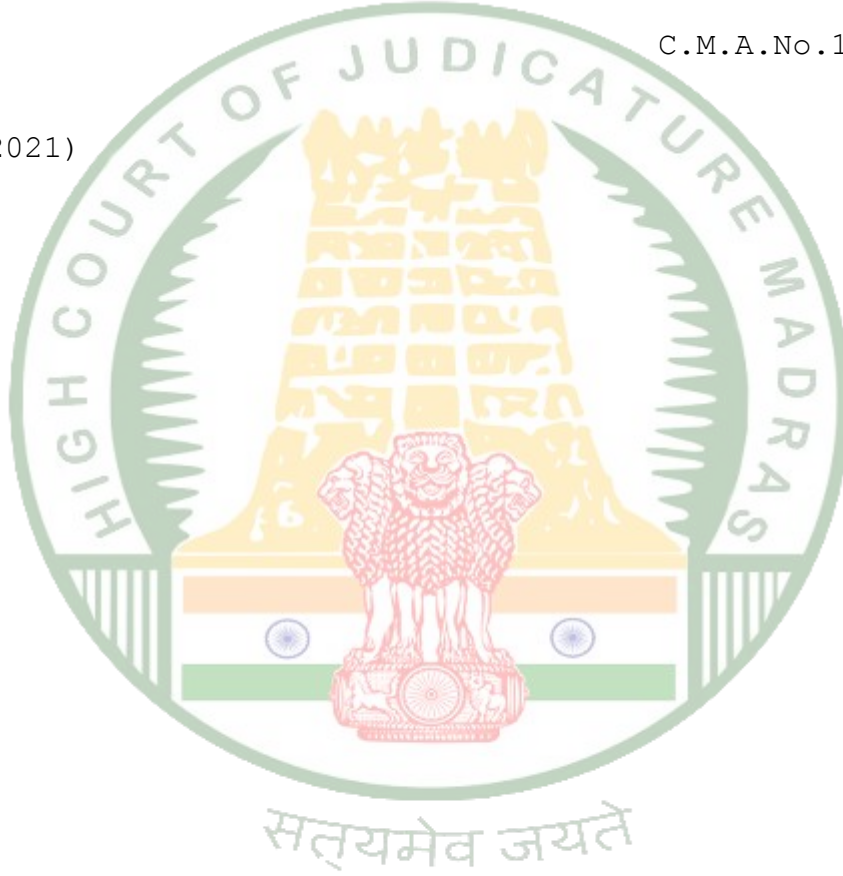
1.The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.I,
Coimbatore.

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

+lcc to Mr.A.Sivaji, Advocate, S.R.No. 34339

C.M.A.No.1599 of 2012

CNR(CO)
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