

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1745 of 2013

(Through Video Conferencing)

1.Shanthi

2.D.Kumar Appellants/Petitioners

Vs.

1.Vedapuri

2.The Divisional Manager,
The Oriental Insurance Company Limited,
Arcot Road, Vellore -1.

3.Velu

(R1 & R3 Exparte before the Tribunal)

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 21.03.2011 made in M.C.O.P.No.313 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore.

For Appellants : Mr.M.Siva Kumar

For R2 : Mr.M.Krishnamurthy

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J U D G M E N T

With consent of both the learned counsel for the appellants and the 2nd respondent, this Civil Miscellaneous Appeal is taken up for hearing and the final disposal.

2. This Civil Miscellaneous Appeal has been filed by the appellants against the impugned Judgment and Decree dated 21.03.2011 passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Vellore in M.C.O.P.No.313 of 2008.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.1,00,000/- as compensation together within interest at 7.5% from the date of restoration of the claim petition till the date of realisation and cost, to the appellants/claimants and the 3rd respondent.

4. The appellants and the 3rd respondent are the sons and daughter and dependents of the deceased Dhanapal. The deceased Dhanapal died in a motor accident while riding a bicycle in Marudhalam to Solinghur Road, when a Mahendra Van bearing registration No. TN-23-Q-0649 insured with the 2nd respondent driven in rash and negligent manner hit him, as a result of which, he suffered grievous injury and later he died in the hospital. Therefore, the claim petition was filed by the appellants for compensation. The Tribunal has awarded the aforesaid compensation of Rs.1,00,000/-. Aggrieved by the same, the appellants/claimants have filed this Civil Miscellaneous Appeal for enhancement of compensation.

5. In this Civil Miscellaneous Appeal, the appellants seeking for enhancement of the compensation awarded on the ground that while awarding the aforesaid compensation of Rs.1,00,000/-, the Tribunal has taken the income of the deceased as Rs.2,000/- per month merely because the deceased was aged about 65 years at the time of death. The learned counsel for the appellants/claimants submits that though the deceased was aged about 65 years old yet, he was earning a sum of Rs.6,000/- per month at on average of Rs.200/- per day.

6. I have considered the arguments advanced by the learned counsel for the appellants and the 2nd respondent. I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

7. The income of the deceased fixed by the Tribunal appears to be low. Considering the fact that the appellants/claimants have not produced any evidence to substantiate the same, the notional income of the deceased is fixed at Rs.4,500/- per month as per the decision of the Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co.Ltd., 2014 (1) TN MAC 459, wherein the Court had fixed the income of a vegetable vendor as Rs.6,500/- per month. Therefore, the income of the deceased of Rs.2,000/- per month, is enhanced to Rs.4,500/-.

8. After deducting the personal expenses of the deceased at 1/3rd, the contribution of the deceased for the purpose of fixing compensation is as follows:-

Income	: Rs.4,500/-
Less: Personal expenses 1/3 rd	: Rs.1,500/-

	Rs.3,000/-

Multiplier 5:-

Total (3,000 x 12 x 5) = Rs.1,80,000/-

9. A sum of Rs.20,000/- towards other heads, namely, Funeral Expenses, Love and Affection and etc., is re-fixed by this Court. Therefore, in all, the total compensation of Rs.1,00,000/- fixed by the Tribunal, is enhanced to Rs.2,00,000/-.

10. The learned counsel for the 2nd respondent submitted that the compensation awarded by the Tribunal, has already deposited by the 2nd respondent Insurance Company. In case the 2nd respondent has not been deposited the same, the 2nd respondent shall deposit the compensation awarded by the Tribunal and the enhanced amount of Rs.1,00,000/- in this Judgment together with interest at 7.5% per annum from the date of restoration of the claim petition till the date of such deposit and cost as was ordered by the Tribunal, less amount already deposited if any, within a period of six weeks from the date of receipt of copy of this Judgment.

11. On such deposit, each of the appellants are entitled to an amount of Rs.70,000/- and proportionate cost borne by them as was ordered by the Tribunal together with interest at 7.5% per annum. The 3rd respondent is entitled to the balance amount of Rs.60,000/- together with interest at 7.5% per annum. Parties shall file suitable application before the Tribunal, to withdraw their respective amount of compensation together with interest at 7.5% per annum, less the amount already withdrawn if any.

12. This Civil Miscellaneous Appeal is partly allowed. No cost.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

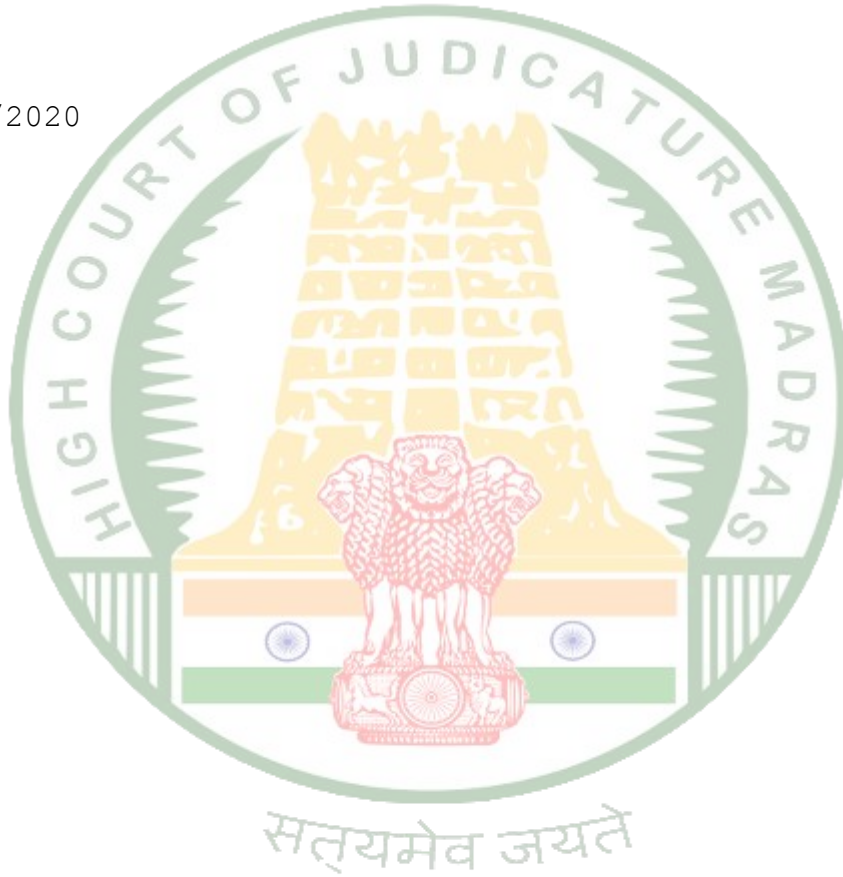
To:

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Vellore.

+lcc to Mr.C.Prabakaran, Advocate Sr.24846

C.M.A.No.1745 of 2013

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srg 15/12/2020



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