

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.360 of 2020

1.M.Kalvikkarasi

2.B.Kasinathan

3.Thaiyalnayagi .. Appellants/Petitioner

Vs.

1.P.R.Dineshkumar

2.The Divisional Manager

National Insurance Company Ltd.

D.No.110, J.N.Street

Puducherry - 605 001.

... Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.01.2019 made in M.C.O.P.No.1799 of 2014 on the file of Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

For Appellants : Ms.Ramya V.Rao

For R2 : Mr.J.Chandran

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 10.01.2019 made in M.C.O.P.No.1799 of 2014 on the file of Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

2.The appellants are claimants in M.C.O.P.No.1799 of 2014 on the file of Motor Accident Claims Tribunal, Principal District Court, Cuddalore. They filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one Machakanthan, who died in the accident that took place on 25.04.2014.

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 Tata Indica car belonging to the 1st respondent, fixed 90 : 10 contributory negligence on the part of the 1st respondent as well as the deceased for not wearing helmet, awarded a sum of Rs.11,45,200/- as compensation to the appellants and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.10,31,000/- being 90% of the award amount as compensation to the appellants at the first instance and recover the same from the 1st respondent, owner of the car for violating the policy conditions by driving the vehicle without permit.

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 24 years at the time of accident and was earning a sum of Rs.15,000/- to Rs.20,000/- per month by working as Senior Mason in Kupparao Civil Constructions, Cuddalore. The deceased had completed his course in Taanscend Institute on masonry and he had also worked in Qatar in QVDC Company as Tower Crane Operator. The appellants have produced documents to prove the same. The Tribunal without considering 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 love and affection to the parents of the deceased and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that 1st appellant has remarried subsequent to the demise of the deceased Machakanthan and she will not be entitled to claim any compensation as a dependant of the deceased. The mother of the deceased alone is the dependant of the deceased. The Tribunal after considering all the materials available on record, has awarded just compensation. 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 2nd respondent/Insurance Company and perused the entire materials available on record.

8.It is the contention of the appellants that the deceased was aged 24 years at the time of accident and was earning a sum of Rs.15,000/- per month by working as a Mason in Kupparao Civil Constructions, Cuddalore. The appellants have marked Exs.P9 to P14 to prove that the deceased was working as Mason. 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.10,000/- per month is fixed as notional income of the deceased. As per Ex.P2/post-mortem certificate, the deceased was aged 33 years at the time of accident. The Tribunal granted 40% enhancement towards future prospects, applied multiplier '16' and deducted 1/3rd towards personal expenses, which are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.17,92,000/- (Rs.10,000/- + 4000 [Rs.10,000/- X 40%] X 12 X 16 X 2/3). In addition to that, the Tribunal awarded a sum of Rs.40,000/-, Rs.15,000/- and Rs.15,000/- towards loss of consortium to the 1st appellant, loss of estate and funeral expenses respectively under conventional heads. The same are just and reasonable and need not warrant any interference by this Court. The Tribunal has not awarded any compensation towards loss of love & affection to the appellants 2 & 3, who are parents of the deceased. Hence, a sum of Rs.40,000/- each is awarded towards loss of love and affection to the appellants 2 & 3. 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 or reduced
1.	Loss of dependency	10,75,200	17,92,000	Enhanced
2.	Conventional heads:			
	Loss of consortium	40,000	40,000	Confirmed
	Loss of estate	15,000	15,000	Confirmed
	Funeral expenses	15,000	15,000	Confirmed
3.	Loss of love and affection to the appellants 2 & 3	-	80,000	Granted

	Total	10,45,200	19,42,000	Enhanced by Rs.7,16,800/-
	90% of the award amount	10,30,680 rounded off to 10,31,000	17,47,800	(17,47,800 - 10,31,000)

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,31,000/- is hereby enhanced to Rs.17,47,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.7,16,800/- enhanced by this Court as per the order of this Court dated 27.01.2020 made in C.M.P.No.965 of 2020 in C.M.A.SR.No.5423 of 2020]. 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 at the first instance and recover the same from the 1st respondent. On such deposit, the appellants/claimants 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. No costs.

Sd/-
Assistant Registrar

//True copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Principal District Judge
The Motor Accident Claims Tribunal
Cuddalore.

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

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+1cc to Mr.J.Chandran, Advocate SR.No.10371

+1cc to Mr.AN.Viswanatha Rao, Advocate SR.No.10487

C.M.A.No.360 of 2020

CNR (CO)
GMY (27/07/2020)



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