

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1999 of 2013

1.Chitra
2.Minor Ajith
3.Minor Muthuvel
4.Pandamma
(minor appellants 2 and 3 rep. by
next friend & mother, 1st appellant) .. Appellants/Claimants

Vs.

1.S. Devi
2.M/s. Cholamandalam MS General Insurance Co. Ltd.,
rep. by its Manager,
Head Office,
"Dare House", 2nd Floor,
NSC Bose Road,
Chennai 600 001. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 31.07.2012, made in M.C.O.P. No. 188 of 2010, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Perambalur.

For Appellants : Mr. P. Mani

For Respondents : No appearance (For R1)

Mr. E. Rajadurai
for M/s. M.B. Gopalan (For R2)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 31.07.2012, made in M.C.O.P. No. 188 of 2010, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Perambalur.

2.The appellants-claimants filed M.C.O.P. No. 188 of 2010, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Perambalur, claiming a sum of Rs.10,00,000/- as compensation for the death of one Jayaraman, who died in the accident that took place on 08.04.2009.

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 Tipper Lorry belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.3,46,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 31.07.2012, made in M.C.O.P. No. 188 of 2010, the appellants have come out with the present appeal.

5.Learned counsel appearing for the appellants contended that the deceased was working as a Stone Breaker and was earning a sum of Rs.200/- per day. The Tribunal has fixed the income of the deceased at only Rs.75/- per day and Rs.2,250/- per month, which is meagre, merely because the appellants did not examine the Quarry owner. The appellants examined P.W.2, co-worker of the deceased who has deposed that the deceased was earning a sum of Rs.350/- per day by working in the Quarry. The Tribunal ought to have fixed the income of the deceased atleast at Rs.200/- per day, considering the nature of work of the deceased and the date of accident and granted more compensation towards loss of income. The Tribunal ought to have awarded more compensation for loss of consortium to the 1st appellant and ought to have awarded Rs.10,000/- each to the appellants 2 to 4, who are the children and mother of the deceased, towards loss of love and affection, instead of awarding Rs.20,000/- in total. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any evidence let in by the appellants to prove the avocation and income of the deceased, the Tribunal erroneously fixed a sum of Rs.2,250/- per month as the notional income of the deceased, which is not meagre. The total compensation awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8. Heard learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

9. It is the contention of the appellants that the deceased was working as a Stone Breaker in Quarry and was earning a sum of Rs.200/- per day and Rs.6,000/- month. The appellants have examined P.W.2, Co-worker of the deceased to prove the avocation and income of the deceased. The Tribunal without considering the evidence of P.W.2, fixed a sum of Rs.2,250/- per month as notional income of the deceased. The accident is of the year 2009. Considering the year of accident and the evidence of P.W.2, a sum of Rs.6,000/- per month is fixed as the notional income of the deceased. The deceased was aged 30 years at the time of accident and there are four dependents of the deceased. The Tribunal has not granted any enhancement towards future prospects and erroneously deducted 1/3rd towards the personal expenses of the deceased, instead of 1/4th. The appellants are entitled to 40% enhancement towards the future prospects. The Tribunal has rightly applied the multiplier '17' for the deceased aged 30 years. Hence, after deducting 1/4th towards the personal expenses of the deceased, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.12,85,200/- {[Rs.6,000/- + Rs.2,400/- (40% of Rs.6,000/-) x 12 x 17 x 3/4]}. The Tribunal has awarded a meagre sum of Rs.10,000/- towards loss of consortium to the wife of the deceased, 1st appellant. The same is enhanced to Rs.40,000/-. The amount awarded by the Tribunal towards loss of love and affection to the appellants 2 to 4, who are the children and mother of the deceased is meagre. Hence, a sum of Rs.10,000/- each is awarded towards loss of love and affection to the respondents 2 to 4. The sum of Rs.10,000/- awarded by the Tribunal towards funeral expenses is meagre. Hence, the same is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate.

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:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	3,06,000/-	12,85,200/-	Enhanced
2.	Loss of estate	-	15,000/-	Granted

3.	Funeral expenses	10,000/-	15,000/-	Enhanced
4.	Loss of consortium to 1st appellant	10,000/-	40,000/-	Enhanced
5.	Loss of love and affection to appellants 2 to 4	20,000/-	30,000/-	Enhanced
	Total	3,46,000/-	13,85,200/-	Enhanced by Rs.10,39,200 /-

11. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.3,46,000/- is enhanced to Rs.13,85,200/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 188 of 2010. On such deposit, the appellants 1 and 4 are permitted to withdraw their share of the award amount along with proportionate interest and costs, as per the ratio of apportionment fixed above, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minors attain majority. The 1st appellant, mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.10,39,200/-. No costs.

Sd/-

Assistant Registrar(Insp Cell)

//True copy//

Sub Assistant Registrar

gsa

To

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

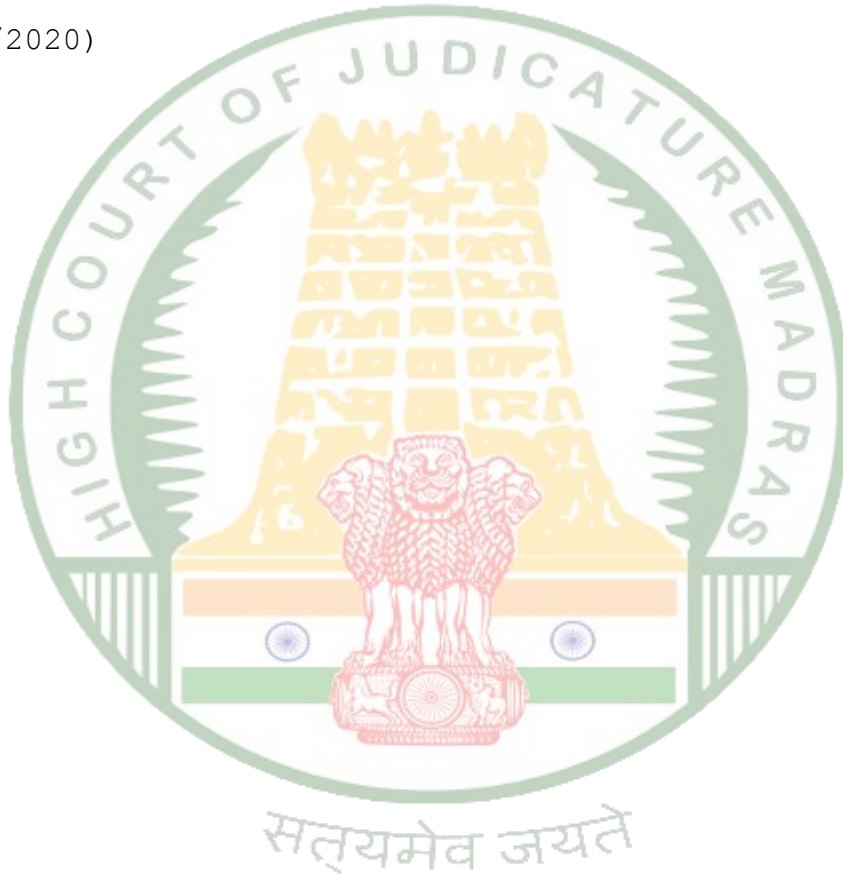
2.The Principal District Judge,
(Motor Accident Claims Tribunal),
Perambalur.

+1cc to Mr.P.Mani, Advocate SR.No.18053

+1cc to M/s. M.B. Gopalan, Advocate SR.No.18311

C.M.A. No. 1999 of 2013

CP (CO)
GMY (03/09/2020)



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