

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2943 of 2012

1.Andal
2.Muniappan
3.Babu
4.Minor.Mala
5.Minor Aasai Thambi ... Appellants/Claimants
(Minor appellants 4 and 5 are represented
by their mother and ***first** friend, Andal)

Vs.

***1.Senthil Kumaran**

2.The Divisional Manager,
The United India Insurance co., Ltd.,
No.46, Katpadi Road, Vellore. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.07.2006 made in M.A.C.T.O.P.No.406 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Thiruvannamalai.

For Appellants : Mr.F.Terry Chellaraja

For R2 : Mrs.K.Saraswathi for
Mr.C.R. Krishnamoorthy

For R1 : Exparte

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 28.07.2006 in M.A.C.T.O.P.No.406 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Thiruvannamalai.

2.The appellants are the claimants in M.C.O.P.No.406 of 2005 on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Ganesan, who died in the accident that took place on 20.01.2005.

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 bus belonging to the first respondent and directed the second respondent, being the insurer of the bus to pay a sum of Rs.2,04,000/- as compensation to the appellants.

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 a mason and was earning a sum of Rs.6000/- per month. The Tribunal fixed meagre sum of Rs.3,000/- per month as notional income and awarded Rs.1,92,000/- as compensation towards loss of dependency. Considering the age of the deceased, the Tribunal ought to have adopted the multiplier 9 instead of 8 and deducted 1/4th instead of 1/3rd towards personal expenses. The Tribunal has not awarded any amount towards loss of estate. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not produced any material evidence to prove that the deceased was earning a sum of Rs.6000/- per month. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.3,000/- per month fixed by the Tribunal as income of the deceased is not meagre. The Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased and the proper multiplier applicable is '8' and awarded compensation towards loss of income. The amounts awarded by the Tribunal under different heads are not meagre and the appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel for the appellants as well as the learned counsel appearing for the second respondent and perused the entire materials on record.

8.It is the contention of the appellants that the deceased was working as mason and was earning a sum of Rs.6000/- per month. They failed to prove the said contention. In the absence

of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.3,000/- per month as income of the deceased. The accident is of the year 2007. In the considered opinion of this Court, the amount fixed by the Tribunal as monthly income of the deceased is meagre. Therefore, a sum of Rs.4,000/- per month is fixed as notional income of the deceased. The deceased was aged 58 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects of the deceased. The appellants are entitled to 10% enhancement towards future prospects and the proper multiplier applicable is "9". There are six dependants of the deceased. Hence, after deducting 1/4th towards personal expenses, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.3,56,400/- {Rs.4,000 +400(4000 x 10%) x 12 x 9 x ¾}.

9.The Tribunal has awarded a sum of Rs.5,000/- towards loss of consortium to the first appellant, which is meagre and the same is enhanced to Rs.15,000/-. The Tribunal has awarded meagre sum of Rs.5,000/- each towards loss of love and affection and funeral expenses, hence the same is enhanced as the appellants are entitled to a sum of Rs.20,000/- and Rs.15,000/- towards loss of love and affection and funeral expenses respectively. 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	1,92,000/-	3,56,400/-	Enhanced
2.	Loss of consortium	5,000/-	15,000/-	Enhanced
3.	Funeral Expenses	2,000/-	15,000/-	Enhanced
4.	Loss of love and affection	5,000/-	20,000/-	Enhanced
	Total	Rs.2,04,000/-	Rs.4,06,400/-	enhanced by Rs.2,02,400/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,02,400/- is hereby enhanced to Rs.4,06,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent 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.406 of 2005 on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai. On such deposit, the appellants 1 to 3 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 share of the minor appellants 4 and 5 is directed to be deposited in any one of the Nationalized Bank, till the minor appellants 4 and 5 attain majority. On such deposit, the first appellant being the mother of the minor appellants 4 and 5 is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants 4 and 5. No costs.

Sd/-
Assistant Registrar(CCC)

**Corrected order to be go
-s/d
Sub Assistant Registrar
dt 02/03/2021**

//True Copy//

Sub Assistant Registrar

smn

To

1.The Motor Accidents Claims Tribunal,
District Judge,
Thiruvannamalai.

Copy to

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

To be substituted
the order already
despatched on
15/02/2021

+1cc to Mr.M. MALAR, Advocate, S.R.No.22290
+1cc to Mr.CR. KRISHNAMURTHY, Advocate, S.R.No.22580

VBA (CO)
SM (08/02/2021)
SM (02/03/2021)

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