

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.513 of 2011

1.Panjavarnem

2.Dhandapani

3.Kalaimagal @ Unnamalai Appellants/Claimants

Vs.

1.Thiyagarajan
(R1 remained exparte before the Tribunal)

2.The United India Insurance Company Ltd.
No.85, Periya street
Tiruvannamalai. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.12.2005 made in M.C.O.P.No.245 of 2004 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai.

For Appellants : Mr.F.Terry Chellaraja

For R2 : Ms.I.Malar

R1 : Exparte

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 30.12.2005 made in M.C.O.P.No.245 of 2004 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai.

2.The appellants are claimants in M.C.O.P.No.245 of 2004 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai. They filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Parasuraman, who died in the accident that took place on 16.09.1998.

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 van belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said van, to pay a sum of Rs.5,69,558/- 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 working as a fitter in Tamil Nadu Government Water Supply Department and was earning a sum of Rs.10,000/- per month. The Tribunal without properly appreciating the same, fixed only a meagre sum of Rs.5,647/- per month as notional income of the deceased and erred in deducting 1/3rd towards personal expenses. The Tribunal has not awarded any compensation towards loss of estate, transportation and loss of love & affection. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that 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 50 years at the time of accident and was earning a sum of Rs.10,000/- per month by working as a fitter in Tamil Nadu Government Water Supply Department. The appellants have marked the salary slip and identity card as Exs.P7 and P15 to prove the avocation and income of the deceased. The Tribunal considering the above materials, fixed a sum of Rs.5,647/- as monthly income of the deceased, which is proper. The Tribunal considering the fact that the deceased was having eight years service, applied split multiplier for calculating loss of income, gross salary for 8 years and reduced the salary for 5 years. The Tribunal applied multiplier '8' and deducted 1/3rd towards personal expenses. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 25% enhancement

towards future prospects. Thus, the compensation awarded by the Tribunal towards loss of dependency till the retirement of the deceased is modified by applying multiplier 8 as follows:

Rs.4,51,776/- (Rs.5,647/- + 1412 [Rs.5,647/- X 25%] X 12 X 8 X 2/3)

8(i).The Tribunal fixed a sum of Rs.300/- as monthly pension of the deceased after his retirement, which is not proper. After retirement, the deceased would have got pension of 50% of his last drawn salary. In view of the same, the appellants are entitled to get compensation of 50% of Rs.5,647/- by applying multiplier 5. By awarding 25% enhancement towards future prospects, the loss of dependency after retirement of the deceased is Rs.1,41,180/- (Rs.5,647/- + 1412 (Rs.5,647/- X 25%) X 12 X 5 X 2/3 X 1/2).

8(ii).The total loss of dependency is arrived at Rs.5,92,956/- (Rs.4,51,776/- + Rs.1,41,180/-).

8(iii).The sum of Rs.5,000/- and Rs.2,000/- awarded by the Tribunal towards loss of consortium and funeral expenses are meagre and hence, the same are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. 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	4,81,408	5,92,956	Enhanced
2.	Medical bills	74,150	74,150	Confirmed
3.	Damage to vehicle	7,000	7,000	Confirmed
4.	Loss of consortium	5,000	40,000	Enhanced
5.	Funeral expenses	2,000	15,000	Enhanced
6.	Loss of estate	-	15,000	Granted

	Total	5,69,558	7,44,106	Enhanced by Rs.1,74,548/ -
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9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,69,558/- is hereby enhanced to Rs.7,44,106/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. 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. On such deposit, the appellants 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(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The District Judge,
The Motor Accident Claims Tribunal,
Tiruvannamalai.

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

+1cc to M/s.T.Ravichandran, Advocate Sr.22474
+1cc to M/s.M.Malar, Advocate Sr.22941

C.M.A.No.513 of 2011

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