

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2615 OF 2013

1.Sasirakha

2.Minor Roopa @ Rohini

3.Minor Ajay

(minors rep by their mother
and next friend 1st appellant) ... Appellants/Claimants

Vs.

1.Ramasuganyadevi

2.The Branch Manager
Oriental Insurance Company Ltd.
No.75, Krishna street
Turuvannamalai.

3.Ramajayam

4.Sumathi

Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 15.10.2012 made in M.C.O.P.No.945 of 2008 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai.

For Appellants : Mr.F.Terry Chellaraja

For R1 : No appearance

For R2 : Mr.S.Arunkumar

For R3 & R4 : Mr.R.Rajarajan for Mr.G.Rajan

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 15.10.2012 made in M.C.O.P.No.945 of 2008 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai.

2.The appellants are claimants in M.C.O.P.No.945 of 2008 on the file of Motor Accident Claims Tribunal, District Court, Tiruvannamalai. They filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Jayakumar, who died in the accident that took place on 17.08.2008.

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 1st respondent and directed the 1st respondent as well as 2nd respondent/Insurance Company being insurer of the said bus to pay a sum of Rs.6,63,000/- as compensation to the appellants 2 & 3, who are children of the deceased and the respondents 3 & 4, who are parents of the deceased.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the deceased was working as Engineer in a private company at Chennai and was earning a sum of Rs.20,000/- per month. The Tribunal without properly appreciating the same, fixed only a meagre sum of Rs.4,500/- per month as notional income of the deceased. There are five dependants of the deceased and the Tribunal ought to have deducted 1/4th instead of 1/3rd towards personal expenses. The Tribunal has not awarded any compensation towards loss of estate. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.The learned counsel appearing for the 2nd respondent/Insurance Company made his submissions supporting the award passed by the Tribunal 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 on behalf of the 1st respondent either in person or through counsel.

8. Heard the learned counsel appearing for the appellants as well as the 2nd respondent/Insurance Company and the respondents 3 & 4 and perused the entire materials available on record.

9. It is the contention of the appellants that the deceased was working as Engineer in a private company at Chennai and was earning a sum of Rs.20,000/- per month. The appellants failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident is of the year 2008 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.7,500/- per month is fixed as notional income of the deceased. The Tribunal fixed age of the deceased as 25 years at the time of accident as per Ex.P4/post-mortem certificate, but erroneously applied multiplier '17'. The multiplier applicable is '18'. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. There are five dependants of the deceased and the Tribunal ought to have deducted 1/4th instead of 1/3rd towards personal expenses. Thus, the compensation awarded by the Tribunal towards loss of dependency is enhanced to Rs.17,01,000/- (Rs.7,500/- + 3000 [Rs.7,500/- X 40%] X 12 X 18 X 3/4). The Tribunal awarded a sum of Rs.10,000/- altogether towards funeral expenses and transportation charges and the same is not proper. Hence, a sum of Rs.15,000/- is awarded towards funeral expenses and a sum of Rs.10,000/- awarded by the Tribunal towards transportation charges is hereby confirmed. The Tribunal has awarded a sum of Rs.40,000/- towards loss of love and affection and the same is meagre. The appellants 2 and 3, who are the children of the deceased have lost their father at their tender age. Similarly, the respondents 3 and 4, who are the parents of the deceased have lost their son. Hence, the appellants 2 and 3 are entitled to a sum of Rs.30,000/- each and the respondents 3 and 4 are entitled to a sum of Rs.20,000/- each towards loss of love and affection. 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.

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: 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	6,12,000	17,01,000	Enhanced
2.	Loss of love and affection to the appellants 2 & 3 and respondents 3 & 4	40,000	60,000 40,000	Enhanced
3.	Funeral expenses and transportation charges	10,000	15,000 10,000	Granted Confirmed
4.	Damage to clothes	1,000	1,000	Confirmed
5.	Loss of estate	-	15,000	Granted
	Total	6,63,000	18,42,000	Enhanced by Rs.11,79,000/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.6,63,000/- is hereby enhanced to Rs.18,42,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants 2 & 3/claimants and the respondents 3 & 4 are directed to pay necessary Court fee, if any, on the enhanced compensation. The appellants 2 & 3 and the respondents 3 & 4 are entitled to compensation as per the apportionment made by the Tribunal. The respondents 1 & 2 are 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 respondents 3 & 4 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. The share amounts of the minors/appellants 2 & 3 are directed to be deposited in any one

of the Nationalised Banks till the minors attain majority. The 1st appellant being mother of the minors/ appellants 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

kj

To

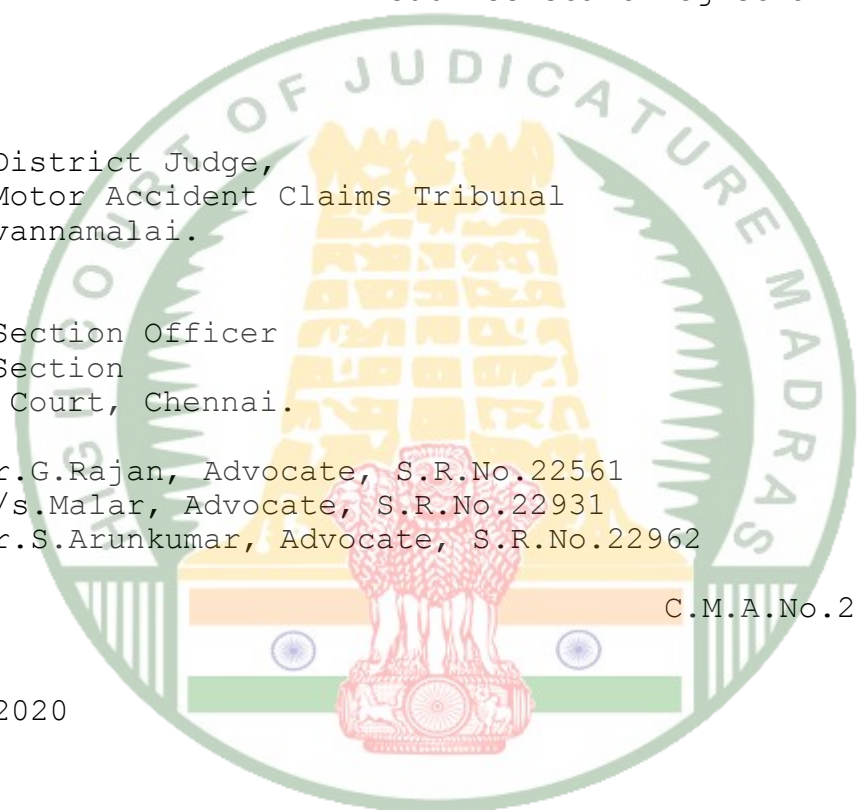
1. The District Judge,
The Motor Accident Claims Tribunal
Tiruvannamalai.

Copy To
The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mr.G.Rajan, Advocate, S.R.No.22561
+1cc to M/s.Malar, Advocate, S.R.No.22931
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.22962

C.M.A.No.2615 of 2013

SSI (CO)
CS/16/10/2020

The seal of the High Court of Madras is a circular emblem. It features a central golden temple gopuram (tower) with a red elephant standing in front of it. The gopuram is set against a background of horizontal stripes in orange, white, and green. The words "HIGH COURT OF JUDICATURE MADRAS" are inscribed in a green circle around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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