



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2020

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2806 of 2013

1.V.Pathmavathi

2.Theva Tharshini

3.V.Abishek

(respondents 2 and 3 are minors
rep. by their mother and
next friend V.Pathmavathi)

4.D.Nagammal

5.K.Dhakshinamoorthy ...Appellants / Petitioner 1 to 5

Vs.

1.G.Chinnasamy

(R1 set exparte before the Lower Court)

2.Bharthi Axa General Insurance Co. Ltd.,

No.965, 2nd floor, Avinashi Road,
Coimbatore - 641 037.

...Respondents / Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.Nos.4026 of 2011 dated 08.11.2012 on the file of the Motor Accident Claims Tribunal, IV Court of Small causes, Chennai.

For Appellants : Mr.V.Venkatesan.

For Respondents : R1 - Set exparte
Mrs.R.Rathnathara for R2.

JUDGMENT

The appellants are the claimants filed this appeal for enhancement of compensation, as against the judgment and decree made in MCOP.Nos.4026 of 2011 dated 08.11.2012 on the file of the Motor Accident Claims Tribunal, IV Court of Small causes, Chennai.

2. On 09.07.2011 at 19.15hrs the deceased was riding the motorcycle bearing Reg.No.TN20 AH 1231 from East to West



direction on Porur to Poonamallee high road, the tanker lorry bearing Reg.No.TN29-AH-1811 which was coming behind in a rash and negligent manner hit the deceased person and died instantaneously. The first claimant is the wife, the claimants 2 and 3 are minor daughter and minor son and the claimants 4 and 5 are parents of the deceased. The first respondent is the owner of the tanker lorry and the 2nd respondent being the insurer of the vehicle.

3. The case of the second respondent/insurance company is that the accident had happened only due to carelessness of the deceased. The amount of compensation claimed is highly excessive.

4. In order to prove the case of the claimant, PW1 to PW3 were examined and marked Ex.P1 to Ex.P15. No oral and documentary evidence has been marked on the side of the respondents.

5. Heard the rival submissions made on both sides and perused the materials available on record.

6. The learned counsel for the appellant submits that the income of the deceased has been arrived at by the Tribunal at Rs.6000/p.m. is very low and not reasonable one. From the evidence of PW3 who is said to be partner of the Desire Clothing Company, it is seen that the deceased was employed as driver and paid Rs.10,000/-p.m. apart from other allowances.

7. The learned counsel for the second respondent/insurance company submits that the Tribunal has rightly considered the entire facts and the nature of work undergone by the deceased and contribution to his family and awarded fair compensation which is on higher side.

8. From the available records, it is seen that the tribunal has considered the case of the claimants and fixed the monthly income at Rs.6000/-p.m. in toto based on the Ex.P14/salary certificate of the deceased and failed to award any further amount for the allowances earned by him, apart from his monthly salary, as stated by the PW3 in his evidence. Considering the age of the minor children of the deceased, this Court is inclined to fix a sum of Rs.7,000/-p.m. towards monthly income and inclined to enhance the amount on other heads.

9. This Court however considering the material factors relevant for determination of just and fair compensation is inclined to enhance the compensation as stated below, the enhanced compensation are as follows :-



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Sl. No.	Heads	Amount
1	*Loss of income (7000 - 1/4 = 5250) (deducting 1/4 from the personal expenses) (5250x12x15)	9,45,000/-
2	Loss of Consortium (wife of the deceased)	25,000/-
3	Loss of Love and affection (parents Rs.10,000/- each) (children Rs.20,000/- each)	60,000/-
4	Funeral expenses	10,000/-
5	Transport	10,000/-
6	Damages to clothing	1,000/-
	Total	10,51,000/-

10. The compensation of Rs.9,37,000/- is enhanced to ***Rs.10,51,000/-**. The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation with interest at 7.5% per annum from the date of petition till the date of payment and with proportionate cost. The time for payment of amount is eight weeks from the date of receipt of copy of the Judgment and on such deposit of amount, the claimants are permitted to withdraw the entire amount by filing separate cheque application. The Award of the Tribunal remains unaltered in other aspects.

11. In the result, the Civil Miscellaneous appeal is partly allowed. No costs.

Sd/-
Assistant Registrar (CS-II)
Dated : 14/11/2020

***New table substituted as per
order of this Court dated
06/01/2021**

Sd/-
Assistant Registrar (CS-II)
Dated : 05/08/2021

// True Copy //

Sub Assistant Registrar

tsh



To

1. The Motor Accident Claims Tribunal,
IV Judge, Court of Small causes,
Chennai.

Copy To

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

+3ccs to Mr.V.Venkatesan, Advocate SR.No.7865, 548

+1cc to Mr.R.Rathna Thara, Advocate SR.No.8245

C.M.A.No.2806 of 2013

SPD(CO)
RVM(21/09/2021)