

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2965 of 2013

- 1.Gandhi
- 2.Unnamalai
- 3.Sumathi
- 4.Sundarai
- 5.Suguna

.. Appellants/Claimants

Vs.

- 1.Baby Saroja
- 2.Divisional Manager,
United India Insurance Company Limited,
No.46, Katpadi Salai,
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 28.03.2013 made in M.C.O.P.No.152 of 2011 on the file of the Motor Accident Claims Tribunal, District Court, Tiruvannamalai.

For Appellants : Mr.F.Terry Chellaraja

For R2 : Mr.D.Bhaskaran

R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 28.03.2013 made in M.C.O.P.No.152 of 2011 on the file of the Motor Accident Claims Tribunal, District Court, Tiruvannamalai.

2.The appellants are the claimants in M.C.O.P.No.152 of 2011 on the file of the Motor Accident Claims Tribunal, District Court, Tiruvannamalai. They filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Karthikeyan, who died in the accident that took place on 26.01.2011.

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 respondents 1 and 2, being the owner and insurer of the bus to pay a sum of Rs.6,85,000/- 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 at the time of accident, the deceased was working as a Cashier in R.K.Constructions, Chennai and was earning a sum of Rs.15,000/- per month. To prove the same, the appellants examined Supervisor of R.K.Constructions, Chennai and marked Ex.P19/pay certificate to that effect. But, the Tribunal fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased. The deceased was aged 28 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The Tribunal ought to have granted 50% enhancement towards future prospects of the deceased. The Tribunal has erroneously adopted multiplier '13', taking into consideration the age of the parents of the deceased. There are 5 dependants of the deceased. The Tribunal ought to have deducted 1/4th towards personal expenses of the deceased instead of deducting 1/3rd. The Tribunal ought to have awarded separate amounts under the heads of funeral expenses and transportation. The amounts awarded by the Tribunal towards loss of love and affection and damages to clothes are meagre. The Tribunal has not awarded any amounts towards loss of estate and mental agony. 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 second respondent-Insurance Company contended that the appellants have not produced the pay bills and acquittance register of the company to prove that deceased was earning a sum of Rs.14,000/- per month. In such circumstances, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased which is not meagre. The Tribunal has rightly adopted multiplier '13' taking into consideration the age of the father of the deceased. The appellants are not entitled to any enhancement towards future prospects of the deceased. The deceased was a bachelor at the time of accident and the Tribunal ought to have deducted 1/2 towards personal expenses of the deceased instead of deducting 1/3rd. The amounts awarded by the Tribunal under different heads are not meagre. 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 learned counsel appearing for the second respondent-Insurance Company and perused the entire materials on record.

8. It is the contention of the appellants that at the time of accident, the deceased was aged 28 years. He was working as a Cashier in R.K.Constructions, Chennai and was earning a sum of Rs.15,000/- per month. To prove the said contention, the appellants examined one Athisayakumar, Supervisor of R.K.Constructions, Chennai and marked Ex.P19/pay certificate. But, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased on the ground that the appellants have not produced the pay bills and acquittance register of the company to prove the income of the deceased. The accident occurred in the year 2011. Considering the date of accident, the monthly income fixed by the Tribunal is modified and fixed as Rs.8,000/- as notional income of the deceased. The deceased was aged 28 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects of the deceased. The Tribunal has adopted multiplier '13', taking into consideration the age of the parents of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2017 ACJ 2700 / 2017(2)TNMAC 609 (SC), [National Ins. Co. v. Pranay Sethi], the age of the deceased is the basis for adopting multiplier method. The correct multiplier applicable is '17'. The deceased was a bachelor at the time of accident and the Tribunal ought to have deducted 50% towards personal expenses of the deceased instead of deducting 1/3rd. In view of the above, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.11,42,400/- {Rs.11,200/- [Rs.8,000/- + Rs.3,200/- (40% of Rs.8,000/-)] X 12 X 17 X $\frac{1}{2}$ }. The Tribunal has awarded a meagre sum of Rs.50,000/- towards loss of love and affection to the appellants. The appellants have lost the deceased at his tender age. Hence, the appellants 1 and 2 who are the parents of the deceased are entitled to a sum of Rs.40,000/- each and the appellants 3 to 5 who are the sisters of the deceased are entitled to a sum of Rs.10,000/- each towards loss of love and affection. The Tribunal has awarded a sum of Rs.10,000/- altogether towards funeral expenses and transportation. The appellants are entitled to a sum of Rs.15,000/- towards funeral expenses and Rs.10,000/- towards transportation. The Tribunal has not awarded

any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate. The amount awarded by the Tribunal towards damages to clothes is just and reasonable and hence, the same is 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
1.	Loss of dependency	6,24,000/-	11,42,400/-	Enhanced
2.	Loss of love and affection	50,000/-	1,10,000/-	Enhanced
3.	Funeral expenses and Transportation	10,000/-	15,000/-	Granted
			10,000/-	Confirmed
5.	Damages to clothes	1,000/-	1,000/-	Confirmed
6.	Loss of estate	-	15,000/-	Granted
	Total	Rs.6,85,000/-	Rs.12,93,400/-	enhanced by Rs.6,08,400/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,85,000/- is hereby enhanced to Rs.12,93,400/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are 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.152 of 2011 on the file of the Motor Accident Claims Tribunal, District Court, Tiruvannamalai. On such deposit, the appellants 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 appellants are

directed to pay the necessary Court fee as per the order of this Court dated 14.03.2013 made in M.P.No.1 of 2013 in C.M.A.No.SR.65964 of 2013. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

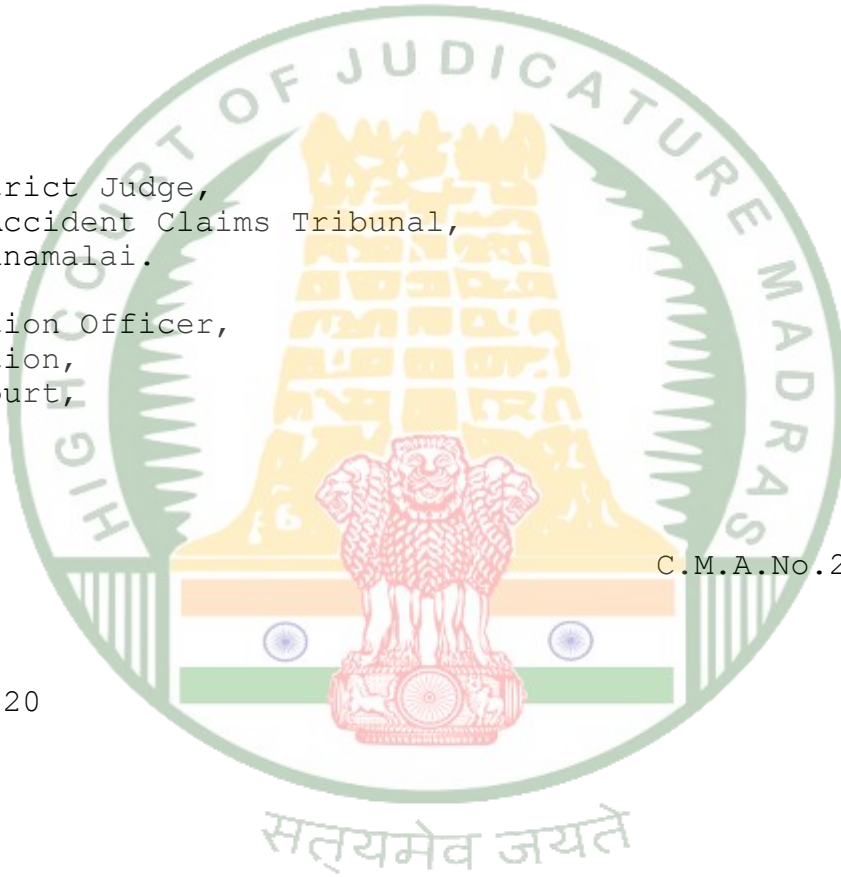
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To

- 1.The District Judge,
Motor Accident Claims Tribunal,
Tiruvannamalai.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.2965 of 2013

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