

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.03.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1930 of 2016

1.Annapurani
2.Pavithara (Minor)
Minor represented by her maternal
grand mother annapurani.
3.Parthasarathy ...Appellants/Petitioner

Vs.

1.Nareshkumar
2.Divisional Manager,
National Insurance Company Limited,
No.19, Officers Line,
Vellore. ...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 28.06.2007 made in M.C.O.P.No.263 of 2006, on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

For Petitioner : Mr.A.Subadra
for M/s.M.Malar

For Respondents : R1-Ex-parte
Mr.S.Arunkumar for R2

J U D G M E N T

The appeal is filed seeking enhancement of compensation with reference to the judgment and decree dated 28.06.2007 passed in M.C.O.P.No.263 of 2006 on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

2. The accident occurred on 16.01.2006 at about 11.30 a.m. The deceased was aged about 38 years. She was working as a coolie in a private company. The monthly income stated as per the claim petition is Rs.3,000/-. The claim petition, which is enclosed in page No.1 of the typed set of papers, reveals that the deceased was residing at Pajanai Kovil 2nd Street, Palichalur, Chennai.

3. The Tribunal adjudicated the issues and arrived at a conclusion that the factum regarding the accident was established and granted a total compensation of Rs.2,04,000/-. The monthly income stated in the claim petition itself was taken for awarding compensation and 1/3 was deducted and therefore, "16" multiplier was applied and for loss of income, Rs.1,92,000/- was awarded.

4. The learned counsel for the appellant mainly contended that the monthly income of Rs.3,000/- fixed by the Tribunal is inadequate and the monthly income is to be enhanced. Therefore, the total compensation is also to be increased. The Tribunal ought to have considered the monthly income for atleast a sum of Rs.4,500/-. Therefore, the appeal requires enhancement of compensation.

5. The learned counsel appearing on behalf of the respondent/Insurance Company sterroneously disputed the contention by stating that it is a practice in some places namely Arani, Thiruvannamalai, Tirupur that old awards are restored, after several years in order to seek enhancement. The learned counsel appearing on behalf of the respondent/Insurance Company reiterated that with reference to the old awards, the appeals are filed after a lapse of several years and the delay is also condoned and thereafter, enhancement of compensation is granted. If such a practice is permitted, the same would defeat the very concept of settlement of compensation to the victims. Most of these appeals are filed, after some judgments are passed by the Apex Court of India and therefore, this Court need not encourage such practice of entertaining the appeals against old awards, after a lapse of many years which are all causing greatest prejudice to the Insurance Company and they have to pay the enhanced compensation, after several years. This apart, the records are not available with the Insurance Company and they are unable to defend the case effectively. Once the award is passed and became final, the records are destroyed and the compensation was also settled. Under these circumstances, the Insurance Company are unable to defend the case with the help of the records and therefore, these appeals are to be rejected in limine.

6. This Court verified the records. M.P.No.2 of 2014 was filed to condone the delay of 2329 days in filing the appeal. Thus, it is clear that the award was passed on 28.06.2007 and the appeal was filed in the year 2014. The copy of the Judgment and Decree was obtained in February, 2010 and it was applied on 01.02.2010 and delivered on 22.04.2010. Therefore, the appeal was filed, after a lapse of 6 1/2 years seeking enhancement of compensation.

7. In the present case, the appellant claims that the monthly income of Rs.3,000/- fixed by the Tribunal is inadequate. However, a verification of the claim petition reveals that the monthly income stated by the claimants in the claim petition itself is Rs.3,000/- per month. That being the factum, there is no reason whatsoever to enhance the monthly income fixed by the Tribunal.

8. This Court is of the considered opinion that the condonation of long delay in this case caused prejudice to the Insurance Company. This apart, as rightly pointed out that the records are not available to the Insurance Company, to defend their case properly. Therefore, the appeals filed with long delay cannot be entertained and the Courts are expected to be cautious in such circumstances. In the event of entertaining appeals, after a prolonged period, then the enhancement cannot be considered with reference to the current situation and it is to be considered with reference to the claim petition filed and the date of accident and other facts and circumstances.

9. It is brought to the notice of this Court that in some places, more specifically, Arani, Tiruvannamalai and Tiruppur, all such old awards are challenged before this Court with a long delay of several years and the delay was condoned and the appeals are entertained. Those appellants are now claiming enhancement of compensation based on the current Apex Court judgment and such grounds cannot be considered by this Court for enhancement of compensation. All such cases are to be dealt in accordance with law.

10. In the event of granting enhanced compensation, this Court is of the considered opinion that the same will result in grant of double compensation, which is impermissible. Compensation was granted by passing an award some years back, therefore, any enhancement made with reference to the current judgments or otherwise would cause prejudice and the same will result payment of double compensation, and the same would affect the very concept of just compensation to be granted with reference to the facts and circumstances set out in the claim petition. This being the factum, this Court is of the considered opinion that condonation of enormous delay cannot be encouraged and it is a classic case, where the delay of 2329 days was condoned, and the same caused prejudice to the Insurance Company. Therefore, power of discretion to condone the delay is also to be exercised cautiously and in the event of condoning the delay, the enhancement cannot be granted with reference to the current day judgments and the cases are to be decided, with reference to the claim petition filed and the merits established before the Tribunal, during the relevant point of time. This

being the factum, this Court is not inclined to interfere with the award of the Tribunal and accordingly the judgment and decree dated 28.06.2007 made in M.C.O.P.No.263 of 2006 is confirmed and the civil miscellaneous appeal stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

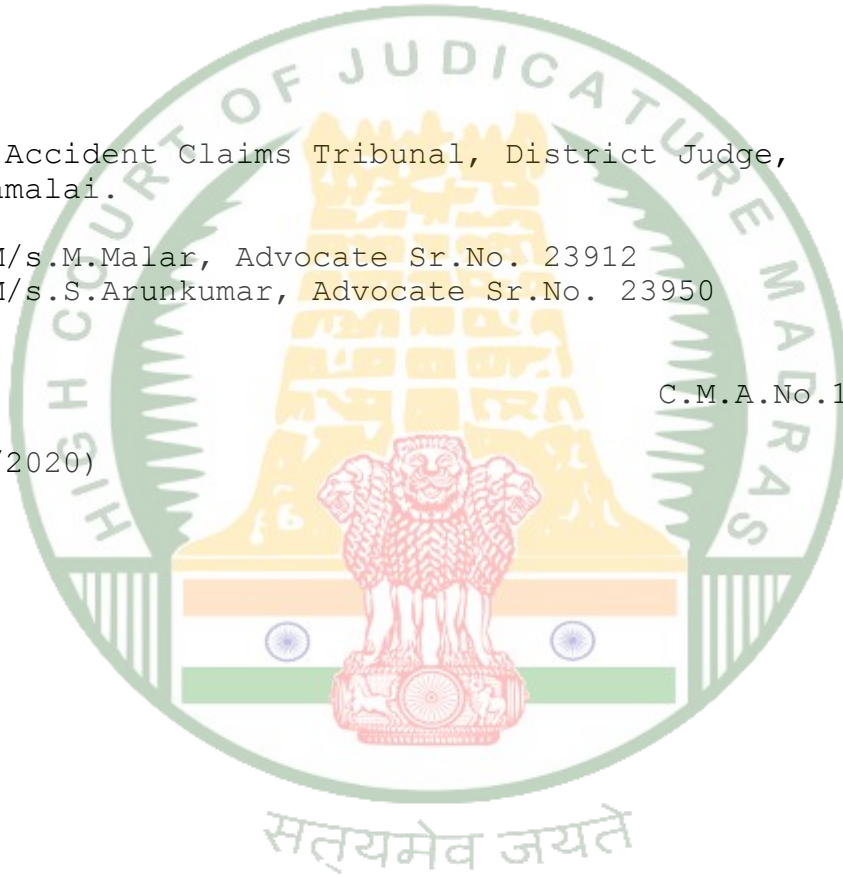
ssb

To
The Motor Accident Claims Tribunal, District Judge,
Thiruvannamalai.

+1 cc to M/s.M.Malar, Advocate Sr.No. 23912
+1 cc to M/s.S.Arunkumar, Advocate Sr.No. 23950

C.M.A.No.1930 of 2016

PPA (CO)
RMP (18/11/2020)



WEB COPY