

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1970 of 2016

1.Arumugam
2.Minor.Suriyaprakash
3.Minor.Pavithra ... Appellants/Petitioner
(Minors 2 & 3 rep by their father next
friend and natural guardian Mr.Arumugam)

Vs.

1.Purushothaman
2.The Divisional Manager,
United India Insurance Company Ltd.,
No.46, Katpadi Salai,
Vellore ... Respondents/Respondents

(1st respondent remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.12.2006 made in M.C.O.P.No.827 of 2005 on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

For Appellants : Mr.F.Terry Chellaraja

For Respondents : Mr.J.Chandran for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 11.12.2006 made in M.C.O.P.No.827 of 2005 on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

2.The appellants are the claimants in M.C.O.P.No.827 of 2005 on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai. They filed the above said claim

petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Mariyammal, who died in the accident that took place on 07.08.2005.

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 motorcycle belonging to the first respondent and directed the second respondent being insurer of the vehicle to pay a sum of Rs.3,47,000/- 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.Learned counsel appearing for the appellants contended that the deceased was working in TVS electronic and was earning a sum of Rs.6,000/- per month. The Tribunal fixed only a meagre sum of Rs.2,500/- per month as notional income of the deceased. The deceased was aged 21 years at the time of accident and the Tribunal ought to have applied proper multiplier and granted 50% enhancement towards future prospects. The Tribunal has not awarded any amount towards loss of consortium, loss of estate, transport expenses, mental agony and damage to cloth and articles. The amounts awarded by the Tribunal under different heads are also meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal, in the absence of any material evidence to prove the avocation and income of the deceased, fixed a sum of Rs.2,500/- per month as notional income and the same is not meagre. The Tribunal after considering all the materials available on record in proper perspective, 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 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 working in TVS Electronic and was earning a sum of Rs.6,000/- per month. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed the notional income at Rs.2,500/- per month and the same is meagre. The accident is of the year 2005. A sum of

Rs.4,000/- per month is fixed as notional income of the deceased. The Tribunal having fixed the age of the deceased as 23 years based on Ex.P4/Post Mortem Certificate, has not awarded any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The Tribunal has erroneously applied the multiplier '17' as against '18' for awarding compensation towards loss of dependency. Deducting 1/3rd towards personal expenses of the deceased and applying correct multiplier '18', the amount awarded by the Tribunal towards loss of dependency is modified to Rs.8,06,400/- {[Rs.4,000/- + Rs.1,600/- (40% of Rs.4,000/-)] x 12 x 18 x 2/3}. A sum of Rs.5,000/- and Rs.2,000/- awarded by the Tribunal towards loss of love and affection and funeral expenses respectively are meagre and the same are hereby enhanced to Rs.20,000/- each to the appellants 2 and 3 towards loss of love and affection and Rs.15,000/- towards funeral expenses respectively. The Tribunal has not awarded any amount towards loss of consortium and loss of estate and hence, a sum of Rs.40,000/- and Rs.15,000/- are awarded towards loss of consortium and loss of estate respectively.

9.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:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	3,40,000/-	8,06,400/-	Enhanced
2.	Loss of love and affection to the appellant 1 and 2 (each Rs.40,000/-)	5,000/-	40,000/-	Enhanced
3.	Loss of consortium	-	40,000/-	Granted
4.	Funeral expenses	2,000/-	15,000/-	Enhanced

5.	Loss of estate	-	15,000/-	Granted
	Total	3,47,000/-	9,16,400/-	Enhanced by Rs.5,69,400/-

10. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.3,47,000/- is enhanced to Rs.9,16,400/- 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 second respondent is 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. On such deposit, the 1st appellant is permitted to withdraw his share of the award amount with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor appellants 2 & 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st appellant, father of the minor appellants 2 & 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 & 3. It is made clear that the appellants shall not be entitled for any interest for the delay period on the amount of Rs.5,69,400/- enhanced by this Court as per the order of this Court dated 26.08.2016 in M.P.No.2 of 2014 in C.M.A.SR.No.22432 of 2014. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

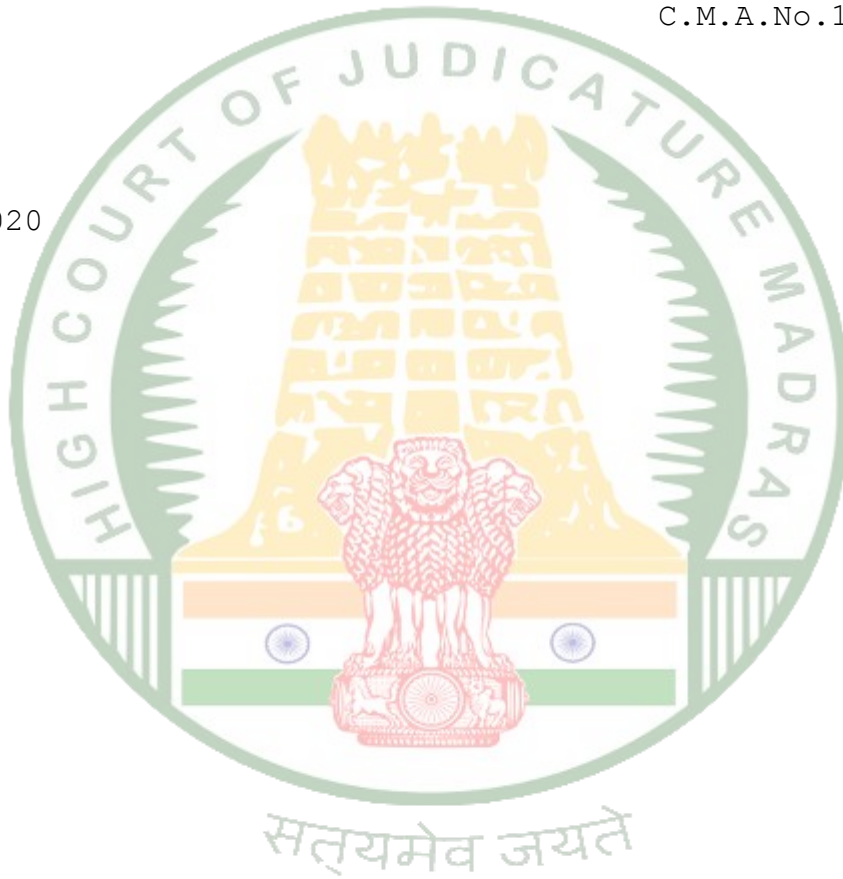
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2.The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to Ms.M.Malar Advocate sr13791
+1 cc to Mr.J.Chandran Advocate sr13227

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