

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.3275 OF 2013

1. Ambika
2. Thadapani
3. Iyyanar
4. Sathiyamoorthy

... Appellants/
Petitioners

Vs.

1. Dilipkumar
2. The Divisional Manager,
United India Insurance Company Ltd,
Nethaji Road, Cuddalore.

... Respondents/
Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MACTOP.No.126 of 2009 dated 04.07.2013 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Puducherry.

For Appellants : M/s.A.Muthukumar

For Respondents : R1 - Set exparte.
Mr.P.Sankaranarayanan, for R2.

J U D G M E N T

The appellant is the claimant filed this appeal for enhancement of compensation, as against the judgment and decree made in MACTOP.No.126 of 2009 dated 04.07.2013 on the file of the Motor Accident Claims Tribunal, II Additional District Judge, Puducherry.

2. On 02.02.2007 at about 8.45am, the first petitioner's son Sivagandan was travelling as a passenger in bus bearing Reg.No.TN31-5175 from west to east at Maraimalai Adigal Salai near Subbiah Statue at Pondicherry. The driver of the bus drove it in a rash and negligent manner and dashed the parked tractor and trailer on the left side at Maraimalai Adigal Salai. Due to the impact, the passenger Sivagandan fell down from the bus

while driver applied sudden brake. He was taken to Government Hospital, Pondicherry, inspite of best treatment he died in the hospital itself. The first respondent being the owner of the vehicle and the second respondent as insurer of the vehicle are jointly and severally liable to pay the compensation to the claimants.

3.The second respondent/insurance company filed counter inter alia stating that the accident had occurred due to the negligence on the part of the deceased and the insurer of the vehicle is not liable to pay the compensation.

4. In order to prove the case of the claimants, PW1 and PW2 were examined and marked Ex.P1 to Ex.P12. No oral and documentary evidence has been 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 age of the deceased is 19years student doing his third year polytechnic. PW2/Rajendiran in his evidence has stated that he also travelled in the same bus, the driver droved the bus rashly and negligently and responsible for the accident. Ex.P1/FIR was registered based on the complaint given by Shankar Ganesh has stated that the driver of the bus has caused the accident due to rash and negligent driving.

7.The learned counsel for the second respondent/insurance company stated that the deceased travelled in the bus on the foot board and lost his balance and fallen down and further submits that the Tribunal has rightly considered the entire facts and negligence of the deceased 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 claimant and taken a sum of Rs15,000/-p.a. notionally as income and adopted the multiplier 16 and calculated the compensation towards pecuniary loss. Considering the qualification and the age of the deceased, if he completed his studies, he would have earned atleast more than a sum of Rs.5,000/-p.m. and hence, this Court is inclined to fix the monthly income at Rs.5,000/- and the multiplier adopted as 18 and after deducting 50% towards his personal expenses the amount arrived at is $(Rs.5000 \times 12 \times 18 / 50\% = Rs.5,40,000/-)$. The Tribunal failed to award any amount under the head of love and affection, as the claimants are parents and siblings of the deceased, this Court is inclined to award a sum of Rs.30,000/- to the claimants under the head love and affection.

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 :-

Sl.No.	Heads	Amount
1	Pecuniary loss (Rs.5000x12x18/50%)	5,40,000
2	Funeral expenses	10,000
3	Loss of estate	5,000
4	Love and affection	30,000
	Total	5,85,000

10. The compensation of Rs.1,35,000/- is enhanced to Rs.5,85,000/-. The same is payable 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 claimant is permitted to withdraw the entire amount by filing separate cheque application.

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

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
II Additional District Judge, Puducherry.

Copy To
The Section Officer,
VR Section, High Court,
Madras.

+1cc to M/s.A.Muthukumar, Advocate, S.R.No.8437
+1cc to Mr.P.Sankaranarayanan, Advocate, S.R.No.8453

C.M.A.No.3275 of 2013

PP(CO)
CS/05/01/2021