

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2501 of 2016

1.V.Chellamma

2.Vellaiyan

.. Appellants/Petitioners

Vs.

1.C.Balasubramanian

2.Reliance General Insurance Company Ltd.

Motor Third Party Claims Cell

No.6, 6th floor, Haddows road

Reliance house, Nungambakkam

Chennai-6.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.04.2016 made in M.C.O.P.No.505 of 2013 on the file of Motor Accident Claims Tribunal, II Additional District Court, Poonamallee.

For Appellants : Ms.Ramya V.Rao

For R2 : Mr.S.Arun Kumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 05.04.2016 made in M.C.O.P.No.505 of 2013 on the file of Motor Accident Claims Tribunal, II Additional District Court, Poonamallee.

2.The appellants are claimants in M.C.O.P.No.505 of 2013 on the file of Motor Accident Claims Tribunal, II Additional District Court, Poonamallee. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of their son viz., V.Dhanasekar, who died in the accident that took place on 07.07.2012.

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 mini lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said mini lorry to pay a sum of Rs.6,87,000/- as compensation to the appellants at the first instance and recover the same from the 1st respondent, owner of the mini lorry, as the driver of the mini lorry did not possess valid driving license to drive the said mini lorry.

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 aged 23 years at the time of accident and had completed third year diploma course in Electrical & Electronics Engineering. He was earning a sum of Rs.10,000/- per month by working as a Technician in Vibrant NDT Services, Sidco, Ambattur Industrial Estate at the time of accident. If the deceased is alive, he would have got decent job with good salary. The Tribunal without properly appreciating the same, fixed only a meagre sum of Rs.8,750/- per month as notional income of the deceased and has not granted any enhancement towards future prospects. The Tribunal erred in applying multiplier based on the age of the mother of the deceased and the Tribunal ought to have applied multiplier based on the age of the deceased. 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 2nd respondent/Insurance Company contended that the Tribunal after considering all the materials available on record, 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 2nd respondent/Insurance Company and perused the entire materials available on record.

8.It is the contention of the appellants that at the time of accident, the deceased was aged 23 years at the time of accident and had completed third year diploma course in Electrical & Electronics Engineering. He was earning a sum of Rs.10,000/- per month by working as a Technician, Level-II, in

Vibrant NDT Services, Sidco, Ambattur Industrial Estate. The appellants have marked Ex.P8/Diploma Certificate to prove the same. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.8,750/- per month as notional income of the deceased. The accident is of the year 2012 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.10,000/- per month is fixed as notional income of the deceased. As per Ex.P7/College Transfer Certificate, the deceased was aged 23 years at the time of accident. The Tribunal erred in applying multiplier '8' based on the age of the mother of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), age of the deceased has to be taken into account for applying multiplier. The multiplier applicable is '18' based on the age of the deceased. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The deceased was a bachelor at the time of accident and the Tribunal ought to have deducted 1/2 instead of 1/3rd towards personal expenses. Thus, the compensation awarded by the Tribunal towards loss of dependency is enhanced to Rs.15,12,000/- (Rs.10,000/- + 4000 [Rs.10,000/- X 40%] X 12 X 18 X 1/2). The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are confirmed.

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 or reduced
1.	Loss of dependency	5,60,000	15,12,000	Enhanced
2.	Funeral expenses	15,000	15,000	Confirmed
3.	Transportation	10,000	10,000	Confirmed

4.	Loss of love and affection	1,00,000	1,00,000	Confirmed
5.	Damage to clothes	2,000	2,000	Confirmed
6.	Loss of estate	-	15,000	Granted
	Total	6,87,000	16,54,000	Enhanced by Rs.9,67,000/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.6,87,000/- is hereby enhanced to Rs.16,54,000/- 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 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount if any, already deposited by them, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the 1st respondent. On such deposit, the appellants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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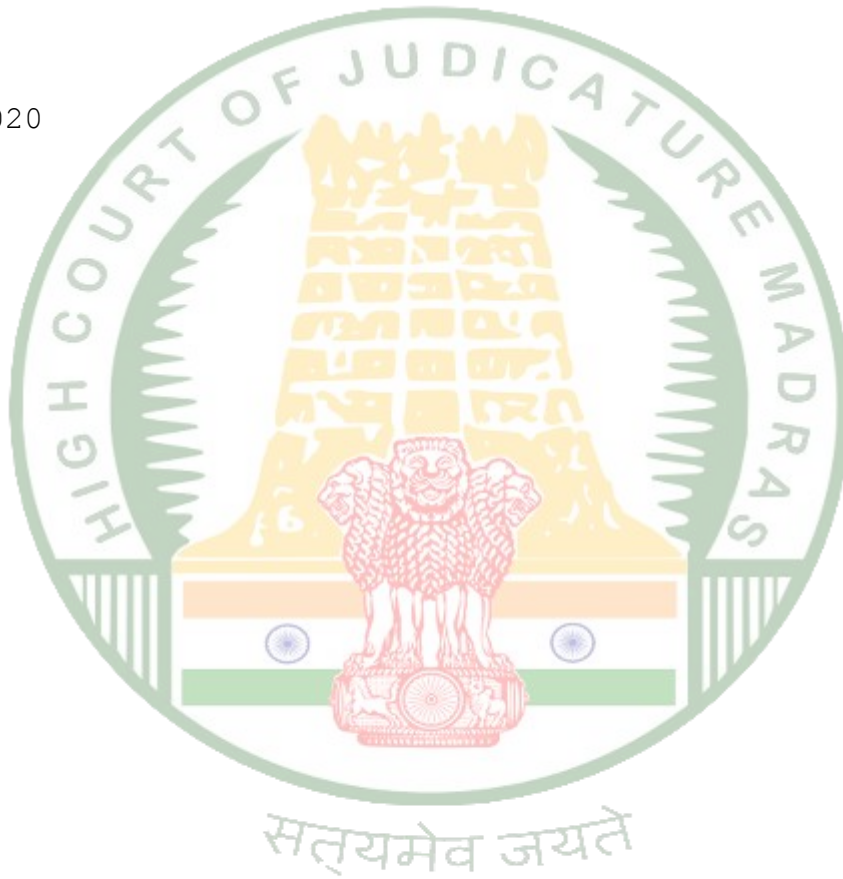
To
1. The II Additional District Judge
The Motor Accident Claims Tribunal
Poonamallee.

2.The Section Officer
V.R.Section
High Court, Chennai.

+1 cc to M/s.A.N.Viswanatha Rao Advocate sr17562
+1 cc to Mr.S.Arun Kumar Advocate sr18415

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