

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.636 of 2020

1.Maheswari

2.Minor. Bhuvaneswaran

3.Minor. Deepika

(Minor appellants 2 and 3 are represented
by their mother, 1st appellant herein)

4.Kanniammal

5.Kandasamy ..Appellants/Petitioners

Vs.

1. R.Srinivasaragavan

2. The Oriental Insurance Company Limited,
No.90A, K.V.A.Complex,
Duraiyur Main Road, Namakkal Town,
Namakkal District. ..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of the Motor Vehicles Act, 1988, against the Judgment and
Decree dated 04.03.2019 made in M.C.O.P.No.16 of 2018 on the
file of the Motor Accident Claims Tribunal, Sub Court, Rasipuram.

For Appellants : Mr.R.Nalliyappan

For R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for
enhancement of compensation granted in the award dated
04.03.2019 made in M.C.O.P.No.16 of 2018 on the file of the
Motor Accident Claims Tribunal, Sub Court, Rasipuram.

2.The appellants are the claimants in M.C.O.P.No.16 of 2018
on the file of the Motor Accident Claims Tribunal, Sub Court,
Rasipuram. They filed the above said claim petition, claiming a
sum of Rs.30,00,000/- as compensation for the death of one

K.Madeshwaran, who died in the accident that took place on 01.10.2017.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the car to pay a sum of Rs.14,79,065/- 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 the deceased was aged 37 years and was working as Machine Operator at Christy Fried Gram Industries and was earning a sum of Rs.15,000/- per month. To prove the same, the appellants examined P.W.3/Manager and produced Ex.P13/experience certificate. The Tribunal without considering the evidence of P.W.3 and Ex.P13, fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased. The Tribunal has not awarded any amount towards loss of estate. 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 notional income fixed by the Tribunal at Rs.6,000/- per month is not meagre. The Tribunal considering the entire materials on record, has awarded a sum of Rs.14,79,065/- as compensation to the appellants, which is not meagre. Hence, the appellants are not entitled to any enhancement 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 2nd respondent-Insurance Company and perused entire materials on record.

8.It is the contention of the appellants that the deceased was aged 37 years and was working as Machine Operator at Christy Fried Gram Industries and was earning a sum of Rs.15,000/- per month at the time of accident. To prove the same, they examined one Saravanan as P.W.3, who is the Manager of the Christy Fried Gram Industries and also produced Ex.P13/experience certificate of the deceased and Exs.W1 to W4 to that effect. The Tribunal after considering the evidence of P.W.3, fixed a sum of Rs.6,000/- per month as notional income of the deceased on the ground that the deceased was a daily wage labour. The reason given by the Tribunal for fixing a sum of Rs.6,000/- per month as notional income of the deceased is not correct. The accident

occurred in the year 2017. Therefore, a sum of Rs.11,000/- per month is fixed as notional income of the deceased. The deceased was aged 37 years at the time of accident and the Tribunal has rightly granted 40% enhancement towards future prospects, adopted multiplier '15' and deducted 1/4th towards personal expenses of the deceased. In view of the same, the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.20,79,000/- {Rs.15,400/- [Rs.11,000/- + Rs.4,400/- (40% of Rs.11,000/-)] X 12 X 15 X 3/4 }. 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 amounts awarded by the Tribunal towards loss of consortium to the 1st appellant, funeral expenses, loss of love and affection, transportation and medical expenses 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 claimant has 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	11,34,000/-	20,79,000/-	Enhanced
2.	Loss of consortium to the 1 st appellant	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection to the appellants 2 to 5	40,000/-	40,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Transportation	10,000/-	10,000/-	Confirmed
6.	Medical expenses	2,40,065/-	2,40,065/-	Confirmed
7.	Loss of estate	-	15,000/-	Granted
	Total	Rs.14,79,065/-	Rs.24,39,065/-	enhanced by Rs.9,60,000/-

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.14,79,065/- is hereby enhanced to Rs.24,39,065/- with interest at the rate of 7.5% per annum from the date of petition till the date of

deposit. 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 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.16 of 2018 on the file of the Motor Accident Claims Tribunal, Sub Court, Rasipuram. On such deposit, the appellants 1, 4 and 5 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 interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 and 3 attain majority. On such deposit, the 1st appellant, being the mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants 2 and 3. The appellants are directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Rasipuram.
2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.R.Nalliyappan, Advocate, S.R.No.15175

+1cc to Mr.J.Chandran, Advocate, S.R.No.15315

C.M.A.No.636 of 2020

(CO)

rv(22/01/2021)