

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.545 OF 2020

1.Ponnusamy

2.Ravikumar

3.santhi ... Appellants/Petitioner

Vs.

1. Sathiyamoorthy

2. The National Insurance Company Limited,
10, 803-A, 8th Floor, Tower 3, Konnectus Building,
Opposite to New Delhi Railway Station, Bhavbhuti,
New Delhi - 110 002.

3. The National Insurance Company Limited,
Branch Office: 73, Perundurai Road,
Near Collector Office, Post Box No.911,
Erode - 638 011.

... Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.10.2019 made in M.C.O.P.No.521 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

For Appellants : Mr.T.S.Arthanareeswaran

For R3 : Ms.N.B.Surekha

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 18.10.2019 made in M.C.O.P.No.521 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellants are the claimants in M.C.O.P.No.521 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Saraswathi, who died in the accident that took place on 29.11.2017.

4.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 respondents 2 and 3, being the insurer of the car to pay a sum of Rs.5,12,028/- as compensation to the appellants.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellants contended that the deceased was owning a Hotel at Irumbupalam and also doing Agricultural work and was earning a sum of Rs.37,000/- per month at the time of accident. But the Tribunal fixed a meagre sum of Rs.7,000/- per month as notional income of the deceased and awarded only a sum of Rs.3,92,028/- towards loss of dependency. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 3rd respondent contended that the appellants have not produced any material evidence to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income of the deceased, a sum of Rs.7,000/- per month fixed by the Tribunal as notional income of the deceased is excessive. The Tribunal considering the entire materials on record, has awarded a sum of Rs.5,12,028/- as compensation to the appellants, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 3rd respondent and perused entire materials on record.

9.It is the contention of the appellants that the deceased was owning a Hotel at Irumbupalam and also doing Agricultural work and was earning a sum of Rs.37,000/- per month at the time

of accident. They failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.7,000/- per month as notional income of the deceased. The accident occurred in the year 2017 and the monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.10,000/- per month is fixed as notional income of the deceased. The deceased was aged 61 years at the time of accident and the Tribunal has rightly adopted multiplier '7' and deducted 1/3rd towards personal expenses of the deceased. In view of the above, compensation awarded by the Tribunal towards loss of dependency is modified to Rs.5,60,000/- {Rs.10,000/- X 12 X 7 X 2/3}. The amounts awarded by the Tribunal towards loss of consortium to the 1st appellant, funeral expenses, loss of estate and loss of love and affection to the appellants 2 and 3 are just and reasonable and hence, the same are confirmed. 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	3,92,028/-	5,60,000/-	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 and 3	50,000/-	50,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	Rs.5,12,028/-	Rs.6,80,000/-	enhanced by Rs.1,67,972/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,12,028/- is hereby enhanced to Rs.6,80,000/- 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 the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. The respondents 2 and 3 are 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.521 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode. On such deposit, the appellants 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. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
The Special District Judge,
Erode.

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

+2cc to Mr.C.Paraneedharan, Advocate, S.R.No.14058

+1cc to Ms.N.B.Surekha, Advocate, S.R.No.14051

C.M.A.No.545 of 2020

NRL(CO)
CS/07/12/2020

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