

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4232 of 2019

1.Ambiha
2.Minor. Raja
3.Minor. Rajalakshmi
(Minor appellants 2 and 3 are represented
By their mother, Ambiha, 1st appellant)
4.Chinnathambi
5.Doori ... Appellants/Claimants

Vs.

1.Mohamed Younus
2.The Branch Manager,
United India Insurance Company Limited,
Kallakurichi,
Kallakurichi District. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.02.2017 made in M.C.O.P.No.19 of 2016 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi.

For Appellants : Mr.N.S.Suganthan
For R2 : Mr.P.Sankaranarayanan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 20.02.2017 made in M.C.O.P.No.19 of 2016 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi.

2.The appellants are the claimants in M.C.O.P.No.19 of 2016 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi. They filed the above said claim petition, claiming a sum of Rs.40,00,000/- as compensation for the death of oneNagaraj, who died in the

accident that took place on 13.11.2015.

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 auto belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the car to pay a sum of Rs.15,89,000/- 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.

5.The learned counsel appearing for the appellants contended that at the time of accident the deceased was working as a Driver and was earning a sum of Rs.25,000/- per month. To prove the same, they produced Ex.P6/salary slip and examined P.W.3/employer of the deceased. The Tribunal without considering Ex.P6 and evidence of P.W.3, fixed a meagre sum of Rs.6,500/- per month as notional income of the deceased. The Tribunal has not granted 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 P.W.3/employer of the deceased in his cross examination has deposed that the deceased was earning a sum of Rs.12,000/- per month and the appellants have not produced the Acquittance Register to prove the income of the deceased. In the absence of production of Acquittance Register by the appellants, the Tribunal following the judgment of the Hon'ble Apex Court reported in 2014 (1) TNMAC 459, [Syed Sadiq Vs. Regional Manager, United India Insurance Company Limited], fixed notional income of the deceased at Rs.6,500/- per month, which is not meagre. The Tribunal granted 50% enhancement towards future prospects which is not correct and hence, the appellants are not entitled to any enhancement. The amounts awarded by the Tribunal under different heads are not meagre 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 the deceased was working as a Driver and was earning a sum of Rs.25,000/- per month. To prove the same, they produced Ex.P6/salary slip and examined P.W.3/employer of the deceased. P.W.3/employer of the deceased in his cross examination has deposed that the deceased was earning a sum of Rs.12,000/- per month but the appellants have not produced the Acquittance Register to prove the income of the deceased. In the absence of production of Acquittance Register by the appellants, the Tribunal following the judgment of the Hon'ble Apex Court reported in 2014 (1) TNMAC 459, [Syed Sadiq Vs. Regional Manager, United India Insurance Company Limited], fixed notional income of the deceased at Rs.6,500/- per month. The accident occurred in the year 2015 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.9,000/- per month is fixed as notional income of the deceased. The deceased was aged 32 years at the time of accident and the Tribunal has awarded 50% enhancement towards future prospects, which is not correct. The appellants are entitled to only 40% enhancement towards future prospects. The Tribunal rightly adopted multiplier '16' and deducted 1/4th towards personal expenses of the deceased. In view of the above, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.18,14,400/- {Rs.12,600/- [Rs.9,000/- + Rs.3,600/- (40% of Rs.9,000/-) X 12 X 16 X $\frac{3}{4}$]}.

9.The Tribunal has awarded excessive amounts of Rs.1,00,000/- and Rs.25,000/- towards loss of consortium to the 1st appellant and funeral expenses and the same are reduced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has awarded a meagre sum of Rs.10,000/- each to the appellants 4 and 5 towards loss of love and affection and the same is enhanced to Rs.20,000/- each. 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 compensation awarded by the Tribunal towards loss of love and affection to the appellants 2 and 3 is just and reasonable and hence, the same is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	14,04,000/-	18,14,400/-	Enhanced
2.	Loss of consortium to the 1 st appellant	1,00,000/-	40,000/-	Reduced
3.	Funeral expenses	25,000/-	15,000/-	Reduced
4.	Loss of love and affection to the appellants 2 and 3	40,000/-	40,000/-	Confirmed
5.	Loss of love and affection to the appellants 4 and 5	20,000/-	40,000/-	Enhanced
6.	Loss of estate	-	15,000/-	Granted
	Total	Rs.15,89,000/-	Rs.19,64,400/-	enhanced by Rs.3,75,400/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,59,000/- is hereby enhanced to Rs.19,64,400/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit. The second 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.19 of 2016 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi. 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 proportionate 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

attains 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. It is made clear that the appellants are not entitled for any interest for Rs.3,75,400/- the amount now enhanced by this Court, as per the order of this Court dated 03.10.2019 made in C.M.P.No.5844 of 2019 in C.M.A. (SR).No.24706 of 2019. No costs.

Sd/-

Assistant Registrar

/true copy/

Sub Asst. Registrar

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To

1.The III Additional District Judge,
Motor Accident Claims Tribunal,
Kallakurichi.

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

+1 cc to Mr.P.Sankaranarayanan Advocate sr9932

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