

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2177 of 2019

- 1.Sharmila
- 2.Kannan
- 3.Lakshmi
- 4.Rani

... Appellants/Petitioners

Vs.

- 1.Manikandan

- 2.The Branch Manager,
United India Insurance Company Limited,
Kallakurichi,
Kallakurichi 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 30.09.2016 made in M.C.O.P.No.234 of 2015 (M.C.O.P.No.22 of 2015 before the Sub Court, Kallakurichi) 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
सत्यमेव जयते

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 30.09.2016 made in M.C.O.P.No.234 of 2015 (M.C.O.P.No.22 of 2015 before the Sub Court, Kallakurichi) 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.234 of 2015 (M.C.O.P.No.22 of 2015 before the Sub Court, Kallakurichi) 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 one Raja, who died in the accident that took place on 11.10.2014.

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 car belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the car to pay a sum of Rs.22,50,000/- 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 the deceased was working as a Driver and was earning a sum of Rs.20,000/- per month. The Tribunal fixed a meagre sum of Rs.6,500/- per month as notional income of the deceased. The deceased was aged 28 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects of the deceased. The amount awarded by the Tribunal towards loss of consortium is meagre and 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 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.6,500/- per month fixed by the Tribunal as notional income is excessive. The Tribunal has awarded excessive sum of Rs.22,50,000/- as compensation to the appellants. In such circumstances, the appellants are not entitled to any enhancement towards future prospects and loss of estate. 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 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.20,000/- per month. 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.6,500/- per month as notional income of the deceased. The accident occurred in the year 2014 and the monthly 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 28 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The Tribunal rightly applied multiplier '17' and deducted 1/4th towards personal expenses. In view of the above, compensation awarded by the Tribunal towards loss of dependency is modified to Rs.19,27,800/- {Rs.12,600/- [Rs.9,000/- + Rs.3,600/- (40% of Rs.9,000/-)] X 12 X 17 X $\frac{3}{4}$ }. The excessive amounts of Rs.1,00,000/- and Rs.25,000/- awarded by the Tribunal towards loss of consortium to the 1st appellant and funeral expenses are hereby reduced to Rs.40,000/- and Rs.15,000/- respectively. 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 and medical expenses are hereby 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
1.	Loss of dependency	9,94,500/-	19,27,800/-	Enhanced
2.	Medical bills	11,00,000/-	11,00,000/-	Confirmed
3.	Loss of love and affection	30,000/-	30,000/-	Confirmed
4.	Loss of consortium to the 1 st appellant	1,00,000/-	40,000/-	Reduced
5.	Funeral expenses	25,000/-	15,000/-	Reduced
6.	Loss of estate	-	15,000/-	Granted

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
	Total	Rs.22,49,500/- rounded off to Rs.22,50,000/-	Rs.31,27,800/- rounded off to Rs.31,28,000/-	enhanced by Rs.8,78,000/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.22,50,000/- is hereby enhanced to Rs.31,28,000/- with interest at the rate of 9% per annum from the date of petition till the date of deposit. The appellants are directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court. 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.234 of 2015 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi. 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. It is made clear that the appellants are not entitled for any interest for Rs.8,78,000/- the amount now enhanced by this Court, as per the order of this Court dated 12.04.2019 made in C.M.A.No.2177 of 2019. No costs.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

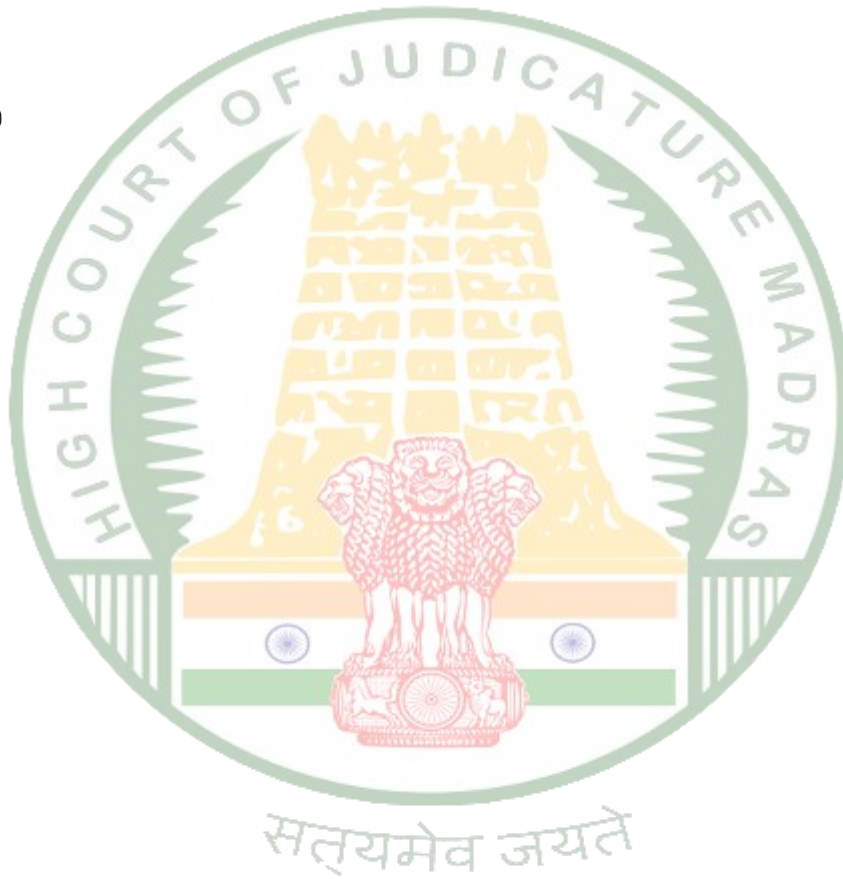
1. The III Additional District Judge,
Motor Accident Claims Tribunal,
Kallakurichi.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to Mr.N.Manokaran Advocate sr10144
+1 cc to Mr.P.Sankara Narayanan Advocate sr9933

C.M.A.No.2177 of 2019

ca(co)
29/10/2020



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