

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1542 of 2018

1.Soundarrajan
2.S. Murugan

.. Appellants

Vs.

1.M.D. Sivaraman
2.Divisional Manager,
Reliance General Insurance Co. Ltd.,
Reliance House, 6th Floor,
No.6, Haddows Road, Nungambakkam,
Chennai 600 006.

.. Respondents

(Since R1 remained exparte before Tribunal,
hence, dispensed with.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.04.2018 made in M.C.O.P. No. 2122 of 2016 on the file of Special Sub Court, (Motor Accidents Claims Tribunal), Cuddalore.

For Appellants : Mr. R. Sreedhar

For Respondents : Mr. J. Chandran (For R2)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 18.04.2018 made in M.C.O.P. No. 2122 of 2016 on the file of Special Sub Court, (Motor Accidents Claims Tribunal), Cuddalore.

2.The appellants are the claimants in M.C.O.P. No. 2122 of 2016 on the file of Special Sub Court, (Motor Accidents Claims Tribunal), Cuddalore. They filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Amirtham, who died in the accident that took place on 14.02.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent riding by the 1st respondent, rider-cum-owner of the Motorcycle and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.5,90,000/- as compensation to the appellants/claimants.

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.Learned counsel appearing for the appellants contended that the deceased, aged 50 years at the time of accident, was working as Agricultural Coolie and was earning a sum of Rs.12,000/- per month. The Tribunal fixed only a meagre sum of Rs.4,000/- per month as notional income of the deceased. The Tribunal erred in granting only 25% enhancement towards future prospects, as against 50%. The Tribunal has not awarded any amount towards loss of amenities. The amount awarded by the Tribunal towards loss of love and affection is 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 that the deceased was earning a sum of Rs.12,000/- per month. In the absence of material evidence, the Tribunal has fixed a sum of Rs.4,000/- per month as notional income of the deceased, which is not meagre. The appellants have not made out any case for enhancement towards future prospects. The compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as 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 Agricultural Coolie and was earning a sum of Rs.12,000/- per month. They failed to prove the same. In the absence of any material evidence to prove the income of the deceased, the Tribunal has fixed the notional income at Rs.4,000/- per month. The accident is of the year 2016. Considering the year of accident, the notional income of the deceased is fixed at Rs.9,000/- per month. The deceased was aged 50 years at the time of accident. There are two dependants of the deceased. The Tribunal has rightly adopted the multiplier '13', granted 25% enhancement towards future prospects and deducted 1/3rd towards the personal expenses of the deceased. Hence, the amount awarded by the Tribunal towards loss of

dependency is modified to Rs.11,70,000/- {[Rs.9,000/- + Rs.2,250/- (25% of Rs.9,000/-)] x 12 x 13 x 2/3}. The Tribunal has awarded a meagre sum of Rs.20,000/- towards loss of estate and loss of consortium together. The same is enhanced and modified as, Rs.15,000/- towards loss of estate and Rs.40,000/- towards loss of consortium to the 1st appellant. The amount awarded by the Tribunal under other heads are just and reasonable and hence, they 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
1.	Loss of income	5,20,000/-	11,70,000/-	Enhanced
2.	Loss of estate & loss of consortium	20,000/-	15,000/- 40,000/-	Enhanced
3.	Loss of love and affection	20,000/-	20,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Transportation	15,000/-	15,000/-	Confirmed
	Total	5,90,000/-	12,75,000/-	Enhanced by Rs.6,85,000/-

10.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.5,90,000/- is enhanced to Rs.12,75,000/- along with interest and costs. The 2nd respondent Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 2122 of 2016. On such deposit, the appellants are permitted to withdraw their share of the award amount, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount,

if any already withdrawn, by filing necessary applications before the Tribunal. The appellants are directed to pay the court fee, if any, on the enhanced amount of Rs.6,85,000/-. No costs.

Sd/-
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

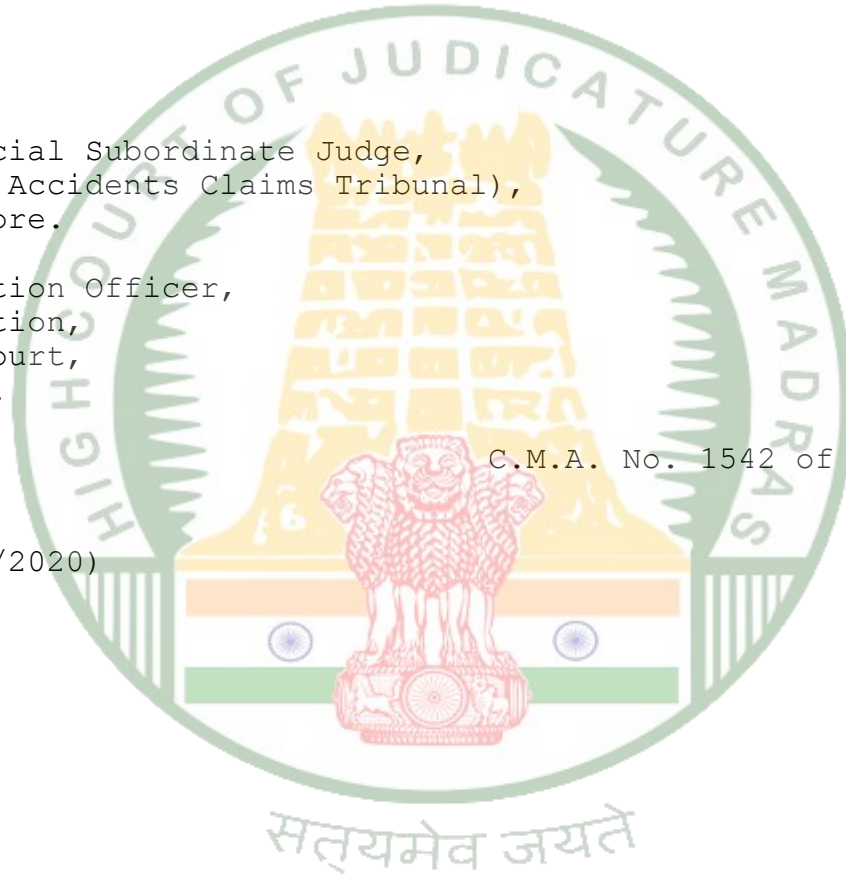
gsa

To

- 1.The Special Subordinate Judge,
(Motor Accidents Claims Tribunal),
Cuddalore.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

C.M.A. No. 1542 of 2018

GMV (20/08/2020)



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