

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2466 of 2012

1. H. Vasantha
2. M. Haldurai ... Appellants /Petitioner

Versus

1. A.M. Venkataraman
2. The National Insurance Company Limited,
No.661, Trunk Road,
Poonamallee,
Chennai - 56. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 29.06.2009 made in M.C.O.P.No.490 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District & Sessions Judge, Fast Track Court I, Poonamallee.

For Appellants : Ms. Y. Jayanthi Bhaskar
for Mr.J.Mahalingam

For Respondents : Mr. S. Vadivel, for R2

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation under the impugned Award dated 29.06.2009 passed by the Motor Accidents Claims Tribunal, Additional District & Sessions Judge, Fast Track Court I, Poonamallee, in M.C.O.P.No.490 of 2007.

2. The brief facts leading to the filing of this appeal are as follows:

(i) On 25.08.2006 at about 12.05 pm the deceased (Surjith) was driving the motorcycle bearing Registration No.TN 43 B 1760, on Srinivasa Road from North to South, stopped the motorcycle at Thiyagaraya Road junction to cross the road. After crossing 3/4th of the road, he took a turn towards west and was proceeded further. At that time, the car bearing Registration No.TN 31 1 9076, which was driven by the first

respondent in a rash and negligent manner at a high speed, dashed against the deceased vehicle and due to the said accident, the deceased was thrown away. Subsequently, he was taken to the Government Hospital, Chennai where first aid was given and thereafter, he was shifted to Apollo Speciality Hospital, Chennai as inpatient for further treatment. In spite of the treatment given to him, he died.

(ii) The appellants/claimants herein have filed a claim petition before the tribunal for a sum of Rs.15,00,000/-. On behalf of the claimants, P.W.1 to P.W.3 have been examined and Exs.P1 to P8 have been marked. On behalf of respondents 1 & 2, no one was examined and no documents have been marked. After hearing both the parties, the tribunal awarded a sum of Rs.6,71,760/- along with interest at 7.5% per annum.

(iii) Aggrieved by the quantum of compensation awarded by the tribunal, the appeal has been filed by the claimants seeking enhancement of compensation.

3. Heard, Ms. Y. Jayanthi Bhaskar, learned counsel for the appellants and Mr.S. Vadivel learned counsel for the second respondent.

4. The learned counsel for the appellants contended that the deceased was employed as Customer Support Associate in Jet Airways India Ltd and was earning Rs.10,800/- per month. When that being the case, the tribunal ought not to have fixed his monthly salary as Rs.4,210/-. The tribunal has wrongly assessed the age of the mother of the deceased instead of the age of the deceased and applied the multiplier '13' instead of adopting the proper multiplier of '18' as per the II Schedule of the M.V.Act. The loss of dependency was arrived by the tribunal at Rs.6,56,760/-. Therefore, the said amount requires revision. Further, the learned counsel contended that Funeral Expenses for a sum of Rs.5,000/- is too low and for Loss of Love and Affection, the tribunal has awarded a sum of Rs.5,000/- to the each claimants, which is also too low. Therefore, prayed for enhancement of the compensation.

5. Rebutting the submission of the claimants, the learned counsel appearing for the second respondent / Insurance Company contended that at the time of accident, the deceased was under influence of alcohol and he had no valid driving licence. Further, the learned counsel contended that the accident was solely due to the rash and negligent driving of the deceased. Therefore, prayed for dismissal of the appeal.

6. In view of the submissions made by both the counsel appearing for the appellants and the second respondent, this

Court is of the view that the tribunal has wrongly taken the multiplier as "13". In the light of the decision in the case of Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 ACJ 1298 SC, for the age group between 21 to 25 years old, the multiplier to be adopted is '18'. The appellants / claimants also rightly pointed out that the multiplier for the aforesaid age group of 21 to 25 as "18". Considering the age of the deceased, it would be appropriate to fix the notional income as Rs.5,000/- and add Future Prospects 40%, which amounts to Rs.7,000/- (5,000 + 2,000). Accordingly, a sum of Rs.15,12,000/- (7,000 X 12 X 18) is awarded towards Loss of Earnings. The Tribunal has awarded a sum of Rs.5,000/- towards Funeral Expenses and the said sum is very meager. Hence, this Court enhances the same as Rs.10,000/-. The Tribunal has awarded a sum of Rs.5,000/- to each of the claimants towards Loss of Love and Affection and the said sum is very meager. Hence, this Court enhances the same as Rs.10,000/- each under the said head.

7. In view of the above findings, the compensation awarded by the Tribunal is modified as follows :

Head	Amount
Loss of Earnings	Rs.15,12,000/-
Funeral Expenses	Rs.10,000/-
Loss of Love and Affection	Rs.20,000/-
Total	Rs.15,42,000/-

8. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the second respondent / insurance company is directed to deposit the said amount of Rs.15,42,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellants/claimants are permitted to withdraw the same as per the apportionment made by the Tribunal by filing a formal petition before the concerned Court, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Additional District & Sessions Judge,
Fast Track Court I, Poonamallee.

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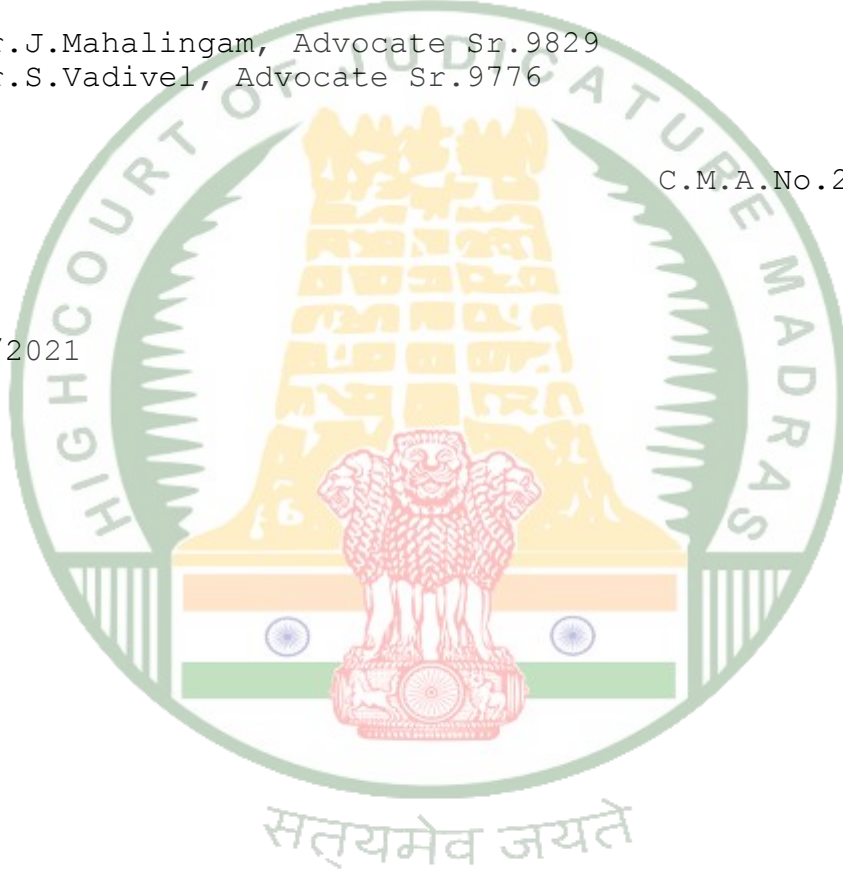
The Section Officer,
VR Section, High Court, Madras.

+2cc to Mr.J.Mahalingam, Advocate Sr.9829

+1cc to Mr.S.Vadivel, Advocate Sr.9776

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