

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1517 of 2020

1. P.Jaya,
2. V.Mangaiyarkarasi,
3. P.Krishnasamy,
4. P.Murugaiyan,
5. P.Ajithrajan
6. Minor P.Arularasi
7. Minor P. Arulmozhi

Minor petitioners rep. By mother guardian NF P.Jaya, the 1st petitioner herein.

All are permanently residing at No.104, Ammankoil Street, Arangamangalam Post, Kurinjipadi Taluk-607 302.

.. Appellants/Petitioners

1. S.Hemavathy,
W/o. J.Santhosam,
No.9/1, MKN Street
Rajiv Gandhi Nagar,
Pattabiram, Chennai-72.

2. United India Insurance Co. Ltd.,
Third Party Service Hub,
Plot No.35, 36, 37, AR Plaza,
45 ft. Road, Balaji Nagar Extn.,
Saram, Puducherry-605 011.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree dated 21.07.2020, made in M.C.O.P.No.2634 of 2017, on the file of the Motor Accident Claims Tribunal/I Additional District and Sessions Judge, Cuddalore.

For Appellants : Mrs.Ramya V Rao
For Respondent : Mr.I.C.Vasudevan for R1
Mr.J.Chandran for R2

J U D G M E N T

The claimants are the appellants, not feeling satisfied with the quantum of compensation awarded by the Tribunal, filed this appeal seeking for enhancement of compensation.

2. It is case of fatal accident claim. The deceased by name Pattusamy, who was 45 years old at the time of accident and he was earning a sum of Rs.15,000/- per month. On 22.02.2017 at about 05.30 p.m., while the deceased riding his bicycle from south to north, keeping extreme left side of Chennai to Kumbakonam main road, near Venkatankuppam road, a Santro Car bearing Regn. No.TN-20-AA-9741 owned by the 1st respondent, which was insured with the 2nd respondent came at a high speed, in a rash and negligent manner, without making horn and dashed against the bicycle, in which the deceased sustained fatal injury. Immediately, he was taken to Government Hospital, Kurinjipadi and then shifted to Jipmer Hospital, Puducherry, but inspite of treatment, he died on 25.02.2017. The claimants, who are wife, three sons and three daughters, claiming compensation of Rs.20 lakhs, have filed the claim petition before the Tribunal.

2. The 1st respondent/owner of vehicle has contested the claim petition and also filed a counter affidavit stating that the accident was taken place due to the negligent driving of deceased and no negligence would be fixed on the driver of the car. It is also stated that the compensation claimed by them is highly excessive and abnormal, and the vehicle has been insured with the 2nd respondent. Hence, the 2nd respondent insurance company is only liable to pay the compensation.

3. The 2nd respondent has also filed a counter affidavit stating that the accident has been taken place due to the negligence of deceased. At the time of accident, the 1st respondent's car did not have a valid permit, fitness and registration certificates. Hence, the 2nd respondent insurance company is not liable to pay the compensation.

4. Before the Tribunal, the 1st claimant herself has examined as P.W.1, a eye-witness to the occurrence was examined as P.W.2. and marked as many as 7 documents as Ex.P1 to P7. On

the side of the respondents, no witness was examined and no document was marked.

5. The Tribunal, after considering the materials available on record, has come to a conclusion that the accident was taken place due to the rash and negligent driving of 1st respondent car. Hence, the car, which was insured with the 2nd respondent is liable to pay compensation. So far as quantum of compensation is concerned, the Tribunal has fixed the monthly income of deceased as Rs.7500/-. After adding 25% towards future prospects, and deducting 1/5th of monthly income towards his personal expenses, the Tribunal has arrived the notional monthly income of deceased at Rs.9375/-, and applying the multiplier of 13, arrived the loss of dependency at Rs.12,60,000/-. In respect of other heads, the Tribunal has awarded a sum of Rs.40,000/- towards loss of consortium, a sum of Rs.70,000/- towards loss of love and affection to all the claimants, a sum of Rs.10,000/- towards transport expenses and a sum of Rs.10,000/- towards funeral expenses. Thus, totally, the Tribunal has awarded a sum of Rs.13,90,000/- as compensation. Not satisfied with the quantum of compensation, the claimants are before this Court by filing this Civil Miscellaneous Appeal.

6. I have heard and considered the submissions of learned counsel appearing for appellants as well as respondent Transport Corporation and perused the records.

7. Considering that fact that the deceased is an agricultural coolie and he was aged about 45 years old, the Tribunal has fixed the monthly income at Rs.7500/-. The learned counsel appearing for the appellant would submit that even as an agricultural coolie, he would easily earn a sum of Rs.400/- per day and the monthly income will be around Rs.12,000/- per month. However, the Tribunal has only fixed the monthly income of deceased as Rs.7500/-, which is not reasonable one. I find some valid ground in her submission. Being an agricultural coolie, definitely, he will get a sum of Rs.300/- per day and get a monthly income of Rs.9000/- per month. Considering the age of deceased as 45 years old, 25% of monthly income should be added as future prospects, which comes to Rs.11,250/-. Considering the number of claimants viz., 7, 1/6th of his monthly income should be deducted towards his personal expenses. Hence, the notional monthly income of deceased would be Rs.9000/- and applying the multiplier of 14, the loss of dependency will be Rs.15,12,000/- instead of Rs.12,60,000/- awarded by the Tribunal. Towards loss of consortium and love and affection, out of 7 claimants, four claimants are major sons and married daughters, they are not dependants of deceased. In the said circumstances, this Court is inclined to award a sum of Rs.2,00,000/- in total, towards loss of consortium and love and affection instead of Rs.1,10,000/-

awarded by the Tribunal. Apart from that, a sum of Rs.15,000/- each is awarded towards funeral expenses and loss of estate. A sum of Rs.10,000/- is granted towards transport expenses.

8. In view of the above, the award passed by the Tribunal is modified as follows :-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Loss of income	12,60,000	15,12,000	enhanced
2	Loss of consortium and loss of love and affection to the appellants	1,10,000	2,00,000	enhanced
3	Transport expenses	10,000	10,000	confirmed
4	Funeral expenses	10,000	15,000	enhanced
5	Loss of estate	Nil	15,000	granted
	Total	13,90,000	17,52,000 (rounded to 17,55,000)	enhanced

Thus, the appellants are entitled to get a sum of Rs.17,55,000/- towards compensation instead of Rs.13,90,000/- awarded by the Tribunal. However, this Court is inclined to grant enhanced amount to the minor children. Hence, the minor children/claimants 6 and 7 are entitled to get a enhanced amount and other claimants are not entitled for the enhanced amount.

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,90,000/- is hereby enhanced to Rs.17,55,000/- together 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 necessary Court fee, if any, on the enhanced compensation. The 2nd respondent Insurance company is directed to deposit the enhanced award amount now determined by this Court along with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit of the enhanced compensation amount, now determined by this Court, minor children/claimants 6 and 7 are entitled to get a enhanced amount and other claimants are not entitled for the enhanced amount. As the claimants 6 and 7 are minors, the enhanced amount shall be deposited in any nationalised bank in any interest bearing fixed deposit scheme

until the minors attain majority and the interest thereon shall be withdrawn by minor appellants' mother, once in three months. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

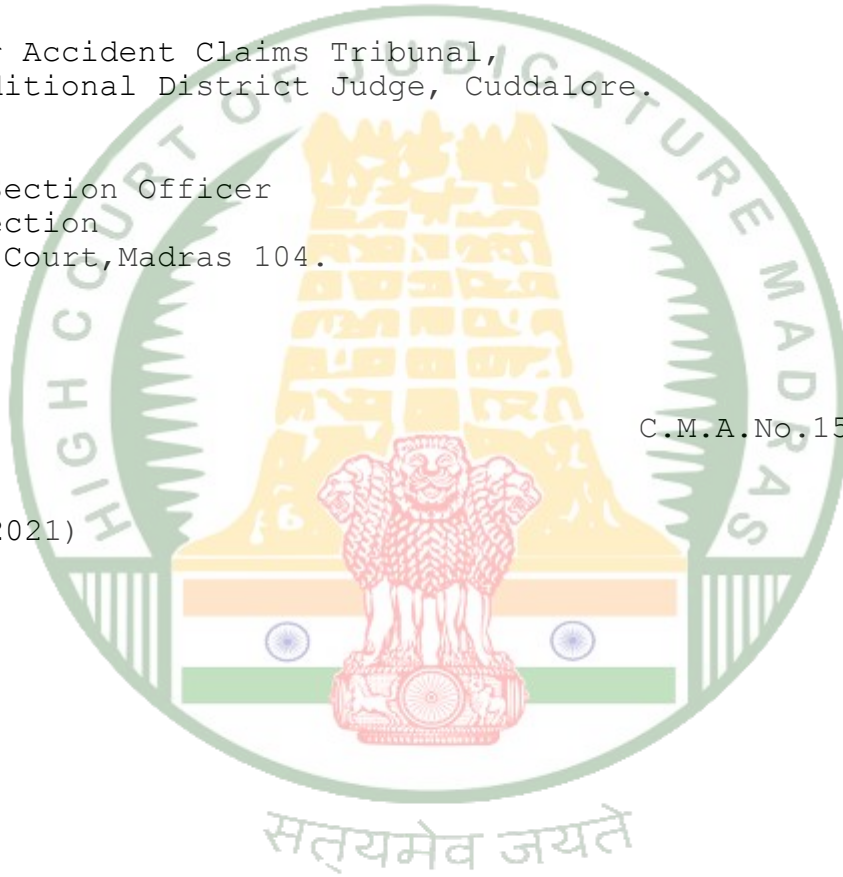
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To

Motor Accident Claims Tribunal,
I Additional District Judge, Cuddalore.

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The Section Officer
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High Court, Madras 104.

MG (CO)
SP (04/03/2021)

C.M.A.No.1517 of 2020



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