

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2603 of 2014

D. Vimala .. Appellant/Claimant
Vs.

1.S. Balaji Singh
(R1 remained exparte before the Tribunal)

2.The New India Assurance Co. Ltd.,
Motor Third Party Cell,
No.45, Moore Street, V Floor,
Chennai 600 001. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.04.2014, made in M.C.O.P. No.4635 of 2006, on the file of the Chief Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr. R. Kalaiarasan

For Respondents: Mr. R. Neethi Perumal (For R2)
R1 exparte

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 16.04.2014, made in M.C.O.P. No.4635 of 2006, on the file of the Chief Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.4635 of 2006, on the file of the Chief Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.9,00,000/- as compensation for the death of one D.Venkatesan who died in the accident that took place on 21.06.2006.

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 Lorry belonging to the 1st respondent and directed the respondents, as owner and insurer of the offending vehicle, to jointly and severally pay a sum of Rs.4,99,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 16.04.2014, made in M.C.O.P. No.4635 of 2006, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the deceased was working as a Lorry driver under M/s. Nithya Transport, Chennai and was earning a sum of Rs.4,000/- per month and Rs.200/- as batta per day. The appellant examined P.W.2 Co-driver to prove the same. The Tribunal without considering the evidence on record, fixed a meagre sum of Rs.4,500/- per month as notional income. The Tribunal erred in not considering the batta given to the Lorry drivers to meet their daily expenses. The deceased was aged 27 years and Bachelor at the time of accident. Considering the fact that the appellant/mother of the deceased is a widow, the Tribunal ought to have deducted 1/3rd towards personal expenses, as against 50% deduction. The Tribunal failed to award any enhancement towards future prospects of the deceased. The compensation awarded by the Tribunal towards funeral expenses and loss of love and affection are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the fact that the deceased died as a Bachelor, rightly deducted 50% towards personal expenses and awarded compensation towards loss of dependency, which is in order. In the absence of any material evidence to prove the avocation and income, the Tribunal rightly fixed monthly income of the deceased at Rs.4,500/- and awarded compensation under different heads which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8.From the materials on record, it is seen that it is the contention of the appellant that at the time of accident, the deceased was working as a Lorry driver under M/s. Nithya Transport, Chennai and was earning a sum of Rs.4,000/- per month

as salary and Rs.200/- per day as batta. The appellant examined P.W.2 Co-driver of the deceased and filed driving license as Ex.P3 to substantiate the same. The Tribunal without considering the evidence of P.W.2 and other materials on record, fixed only a meagre sum of Rs.4,500/- per month as notional income. The accident is of the year 2006. Considering the year of accident and the nature of work done by the deceased, a sum of Rs.6,500/- per month is fixed as notional income of the deceased. As per Ex.P3 - Driving License and Ex.P6 - Transfer Certificate, the deceased was aged 27 years at the time of accident. The Tribunal applied the correct multiplier '17', but failed to grant any enhancement towards future prospects of the deceased. As per the judgment of the Honb'le Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the appellant is entitled to 40% enhancement towards future prospects. The deceased died as a Bachelor. The Tribunal considering the same, rightly deducted 50% towards personal expenses of the deceased. The contention of the learned counsel appearing for the appellant that the Tribunal ought to have deducted 1/3rd towards personal expenses of the deceased is without merits. Thus, the compensation granted by the Tribunal towards loss of dependency is modified to Rs.9,28,200/- {[Rs.6,500/- + Rs.2,600/-(40% of Rs.6,500/-)] x 12 x 17 x 50%}. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are meagre and hence, the same are enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal failed to award any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amount awarded by the Tribunal towards transportation charges is just and reasonable and hence, the same is 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:

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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	4,59,000/-	9,28,200/-	Enhanced
2.	Transportation	5,000/-	5,000/-	Confirmed
3.	Loss of love and affection	25,000/-	40,000/-	Enhanced
4.	Funeral expenses	10,000/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	4,99,000/-	10,03,200/-	Enhanced by Rs.5,04,200/-

10. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.4,99,000/- is enhanced to Rs.10,03,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally directed to deposit the 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.4635 of 2006. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the necessary court fee on the enhanced award amount. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/
Sub Asst. Registrar

gsa
To

1.The Chief Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

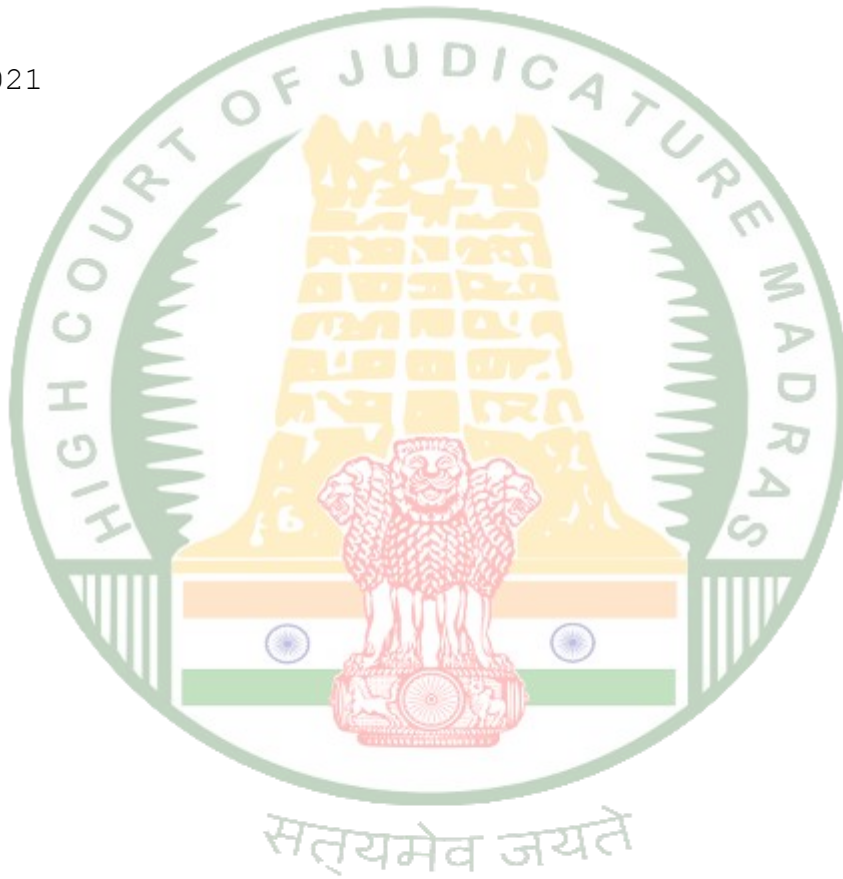
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Copy to:
The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to Mr.N.M.Muthurajan Advocate sr39699

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