

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2658 of 2014

1.Indirani

2.A.Manikandan

.. Appellants/Petitioners

Vs.

1.M.Periyasamy

2.M/s. Sri Ram General Insurance Company Limited,
Nagappa Complex, 2nd Floor, 1076,
Mettupalayam Road, North Coimbatore,
Coimbatore.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.11.2012 made in M.C.O.P.No.1906 of 2010 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Court, Salem.

For Appellants : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

For R2 : Mr.K.Poomalai

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 07.11.2012 made in M.C.O.P.No.1906 of 2010 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Court, Salem.

3.The appellants are the claimants in M.C.O.P.No.1906 of 2010 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Court, Salem. They filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Annamalai, who died in the

accident that took place on 22.08.2010.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.2,86,032/- as compensation to the appellants.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

6.The learned counsel appearing for the appellants contended that at the time of accident the deceased was aged 57 years, doing Coconut Business and also Owner - cum - Driver of Tempo and was earning a sum of Rs.15,000/- per month. The Tribunal fixed a meagre sum of Rs.4,000/- per month as notional income of the deceased. The deceased was aged 57 years and the Tribunal adopted multiplier '8' which is not correct. The correct multiplier applicable is '9'. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are meagre. The Tribunal has not awarded any amount towards loss of consortium to the 1st appellant and loss of estate and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd 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, the Tribunal has fixed a sum of Rs.4,000/- per month as notional income of the deceased and the same is not meagre. The Tribunal has rightly adopted multiplier '8' and the appellants are not entitled to any enhancement towards future prospects. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused entire materials on record.

9.It is the contention of the appellants that at the time of accident the deceased was aged 57 years and was doing Coconut Business and also Owner - cum - Driver of Tempo and was earning a sum of Rs.15,000/- per month. They failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.4,000/-

per month as notional income of the deceased. The accident occurred in the year 2010 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.6,000/- per month is fixed as notional income of the deceased. The appellants contended that deceased was aged 57 years at the time of accident, but they failed to prove the same. As per Ex.P2/post-mortem certificate, the deceased was aged 59 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Co. Ltd., Vs. Pranay Sethi and others] the appellants are entitled to 10% enhancement towards future prospects of the deceased. The deceased was aged 59 years at the time of accident and the Tribunal has adopted multiplier '8' and the same is not correct. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], the correct multiplier applicable is '9'. In view of the above, compensation awarded by the Tribunal towards loss of dependency is modified to Rs.4,75,200/- {Rs.6,600/- [Rs.6,000/- + Rs.600/- (10% of Rs.6,000/-)] X 12 X 9 X 2/3}. The Tribunal has not awarded any amount towards loss of consortium to 1st appellant. The 1st appellant, wife of the deceased is entitled to a sum of Rs.40,000/- towards loss of consortium. The Tribunal has awarded a sum of Rs.20,000/- towards loss of love and affection to the appellants. The 2nd appellant, son of the deceased is entitled to a sum of Rs.40,000/- towards loss of love and affection. The amount awarded by the Tribunal towards funeral expenses is meagre and the same is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. Hence, the appellants are entitled to a sum of Rs.15,000/- towards loss of estate.

10. 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	2,56,032/-	4,75,200/-	Enhanced
2.	Funeral expenses	10,000/-	15,000/-	Enhanced

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
3.	Loss of love and affection to 2 nd appellant	20,000/-	40,000/-	Enhanced
4.	Loss of consortium to 1 st appellant	-	40,000/-	Granted
5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.2,86,032/-	Rs.5,85,200/-	Enhanced by Rs.2,99,168/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,86,032/- is hereby enhanced to Rs.5,85,200/- 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 the necessary Court fee on the enhanced amount of compensation now determined by this Court. The 2nd respondent 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.1906 of 2010 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Court, Salem. 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 proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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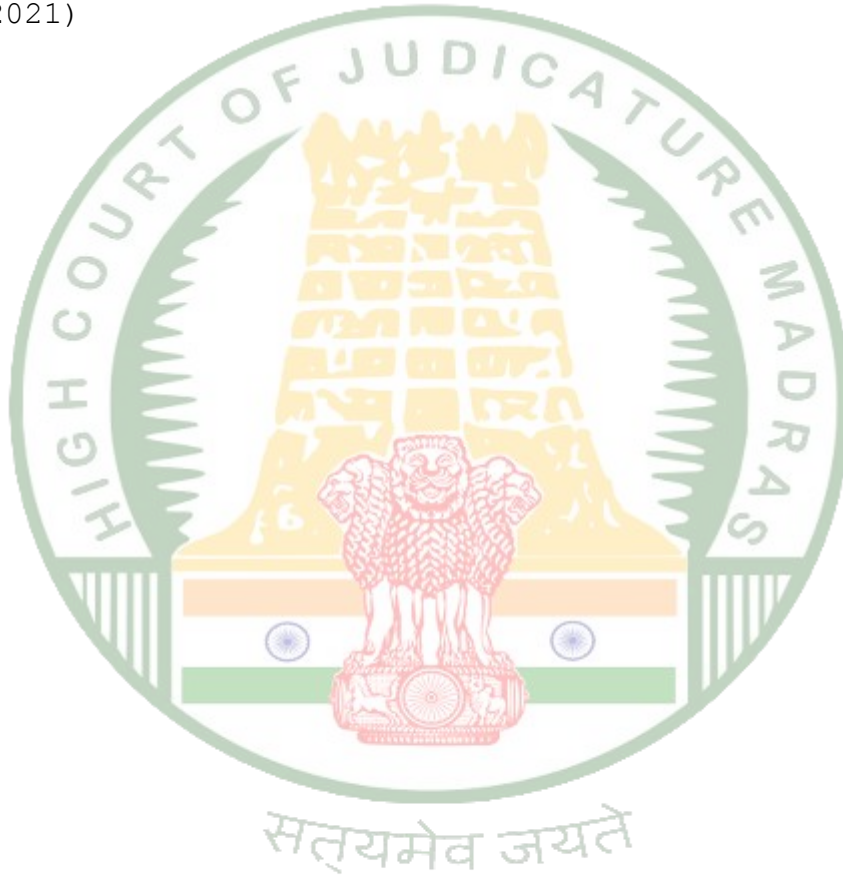
1. The III Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Salem.

Copy to:
The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.37331
+1cc to M/s.K.Poomalai, Advocate, S.R.No.37446

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VBA (CO)
CB(21/04/2021)



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