

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No. 3001 of 2019

1. Santhakumari,
W/o. Late Chandrasekaran
2. Kanimozhi
D/o. Late Chandrasekaran
3. Surendar,
S/o. Late Chandrasekaran
residing at Door No.3/81,
Kodikaramedu,
Thattankuttai,
Keerambur Post,
Namakkal District.

... Appellants/Petitioners

Vs.

1. M.Krishnan,
S/o. Muthusamy
No.27, Karupannan Street,
No.3/14 Road, residing at
Sandaipettai, Pudur,
Namakkal - 637 001.

2. M/s.National Insurance Company Ltd.,
No.63, Rasi Plaza,
Pradhakrishnan Road, Karur ... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the judgment and decree in M.C.O.P. No.182 of 2016, dated 26.02.2019 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellants : Mr.C.Thangaraju
For Respondents : R1 - no appearance

Mr. J.Chandran for R2

J U D G M E N T

The claimants are the appellants before this Court seeking for enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Additional District Judge, Namakkal in MCOP No.182 of 2016.

2. The case of claimants before the Tribunal is that on 19.08.2015 at about 05.45 p.m., when the deceased Chandrasekaran, husband of 1st appellant and father of 2nd and 3rd appellants, riding his two wheeler, a BMW car owned by the 1st respondent, which was insured with the 2nd respondent came in a rash and negligent manner and dashed against the deceased, and he sustained fatal injuries, subsequently succumbed to the same. At the time of accident, the deceased was 45 years old, working as a lorry driver and earning a sum of Rs.20,000/- per month. He was the sole bread-winner of the family. In the said circumstances, claiming a sum of Rs.20 lakhs, the claim petition has been filed by the appellants.

3. The 1st respondent/owner of the vehicle remained exparte and the 2nd respondent Insurance Company contested the claim petition on the ground that the accident has been taken place only due to the rash and negligent driving of deceased and when he was crossing the main road carelessly, and dashed against the car, due to which the accident has been taken place. Hence, the respondents are not liable to pay compensation. The 2nd respondent insurance company has disputed the monthly income of deceased and stated that the compensation claimed by the appellants are highly excessive.

4. In order to prove their claim, the Appellants/claimants examined the 1st appellant as P.W.1 and examined three more witnesses as P.W.2 to P.W.4 and marked as many as 14 exhibits. 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 has been taken place due to the rash and negligent driving of driver of a car and held that the respondents are liable to pay compensation. So far as the quantum of compensation is concerned, the Tribunal had fixed the monthly income of the

deceased as Rs.6500/- and adding 10% towards future prospects, arrived the notional income as Rs.7150/-. The Tribunal after deducting $1/3^{\text{rd}}$ towards personal expenses and applying the multiplier of 11, had fixed the loss of dependency as Rs.6,29,244/-. That apart, towards loss of consortium, a sum of Rs.40,000/- has been granted. Towards loss of estate and funeral expenses, a sum of Rs.15,000/- each has been granted. In total, a sum of Rs.6,99,244/- has been granted as compensation by the Tribunal. Not being satisfied with the award of compensation, the appellants have filed the present appeal.

6. I have considered the rival submissions and perused the materials available on record.

7. The Tribunal, after considering the materials available on record, has come to a conclusion that at the time of accident, the deceased was working as a driver and he was working as a driver in the Vangalamman Transport Company. A letter said to have written by the company has been marked as Ex.P10 and the salary certificate of deceased was marked as Ex.P11. From those documents, it could be seen that the deceased was working as a contract driver in the above transport company and he was paid daily wages from Rs.650/- to Rs.950/- per day depending on the nature of work. In order to prove the same, the claimants have examined the Managing Partner of Transport company as P.W.3. However, the Tribunal had fixed the monthly income of deceased as Rs.6500/-.

8. The accident has been taken place in the year 2015 and being a lorry driver, based on the available materials, it could be held that the deceased could have earned Rs. 750/- per day as wages. Even assuming that he was working for 20 days per month, the deceased could easily earn a sum of Rs.15,000/- per month. The salary certificate Ex.P11 issued by P.W.3 is also supporting the same. Hence, the monthly income of deceased is fixed at Rs.15,000/- per month. The age of deceased was 55 years old at the time of accident, 10% of notional monthly income can be added towards future prospects, which comes to Rs.16,500/-. As there are three claimants, $1/3^{\text{rd}}$ of monthly income can be deducted towards his personal expenses and applying multiplier of 11, the loss of dependency comes to Rs.14,52,000/- instead of Rs.6,29,244/- fixed by the Tribunal. That apart, towards loss of consortium, the 1st appellant is entitled to get a sum of Rs.40,000/-, which was granted by the Tribunal. However, in respect of other two children of deceased, they are entitled to get a parental consortium of Rs.80,000/-, which was not granted by the Tribunal. In the said circumstances, 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	6,29,244	14,52,000	enhanced
2	Loss of estate	15,000	15,000	confirmed
3	Funeral expenses	15,000	15,000	confirmed
4	Loss of consortium for the 1 st appellant	40,000	40,000	confirmed
5	Loss of parental consortium	Nil	80,000	granted
	Total	6,99,244	16,02,000	enhanced

Thus, the appellants are entitled to get a sum of Rs.16,02,000/- as compensation instead of Rs.6,99,244/- as awarded by the Tribunal.

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,99,244/- is hereby enhanced to Rs.16,02,000/- 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 1st 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, the appellants are entitled to share the amount proportionately as ordered by the Tribunal and the appellants are permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

सत्यमेव जयते

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Additional District Court, Namakkal.

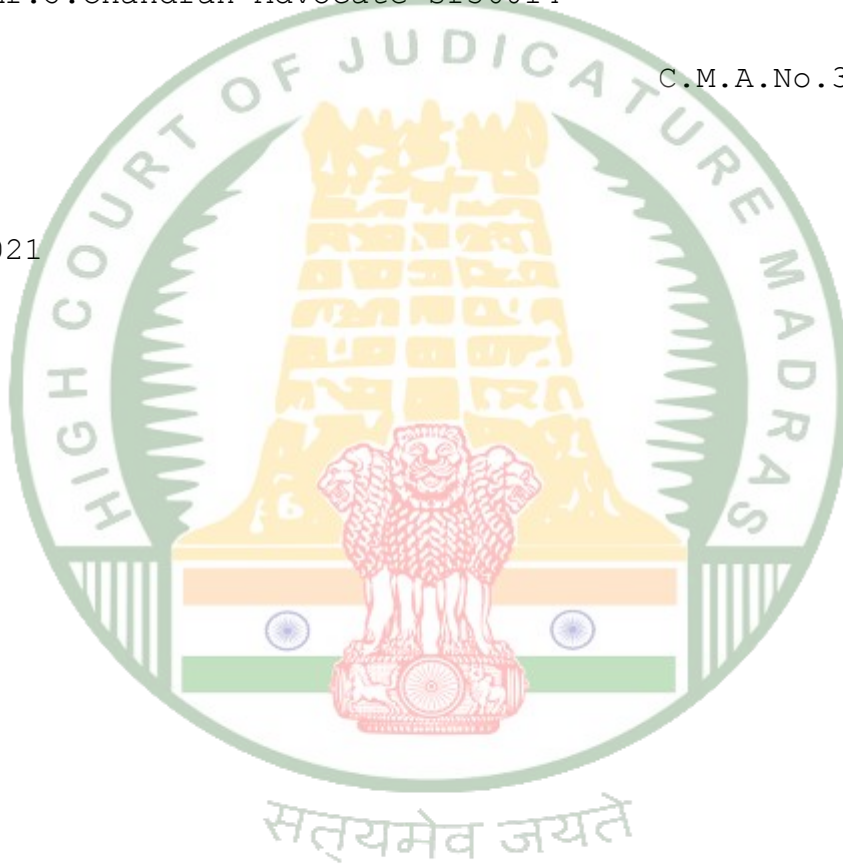
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The Section Officer
VR Section, High Court,
Madras

+2 ccs to Mr.C.Thangaraju Advocate sr35843

+1 cc to Mr.J.Chandran Advocate sr36014

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