

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.632 of 2014

1.C.Sivagami

2.F.Anitha

3.Minor. C.Janani

(Minor 3rd appellant represented by
her mother and next friend, 1st
appellant herein)

4.G.Maragatham (died)

T.V.Govindasamy (died) ... Appellants/Petitioner

[Appellants 1 to 3 are the LRs of the
deceased 4th appellant viz.,
G.Maragatham, vide order of this Court
dated 26.07.2019 made in C.M.A.No.632
of 2014 as per memo dated 26.07.2019
(P-in-Court)]

Vs.

1.S.Ramesh

2.National Insurance Company Limited,
No.66, Greams Road,
Chennai - 600 006.

3. Tamil Nadu State Transport Corporation
(Villupuram) Limited, rep.by his Managing Director
Kancheepuram. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of the Motor Vehicles Act, 1988, against the Judgment and
Decree dated 31.10.2013 made in M.C.O.P.No.1896 of 2010 on the
file of the Motor Accidents Claims Tribunal, Chief Judge Small
Causes Court, Chennai.

For Appellants : Mr.R.Kalai Arasan
for Mr.N.M.Muthurajan

For R1 : No appearance

For R2 : Mr.D.Bhaskaran

For R3 : Mr.C.S.K.Sathish

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 31.10.2013 made in M.C.O.P.No.1896 of 2010 on the file of the Motor Accidents Claims Tribunal, Chief Small Causes Court, Chennai.

3.The appellants are the claimants in M.C.O.P.No.1896 of 2010 on the file of the Motor Accidents Claims Tribunal, Chief Small Causes Court, Chennai. They filed the above said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of one G.Chandran, who died in the accident that took place on 30.04.2010.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to negligent driving by the driver of the van belonging to 1st respondent as well as the driver of the bus belonging to 3rd respondent-Transport Corporation, fixed negligence in the ratio 50% : 50% and awarded a sum of Rs.7,59,450/- as compensation to the appellants and directed the 2nd respondent-Insurance Company and the 3rd respondent-Transport Corporation to pay 50% each of the award amount 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 the deceased was running a Flour Mill under the name and style of M/s. Sri Mangadu Kamatchi, Zamin Pallavaram, Chennai - 600 043 and was earning a sum of Rs.25,000/- per month and appellants produced Exs.P7 to P9 to prove the same. The Tribunal fixed a meagre sum of Rs.4,500/- per month as notional income of the deceased. The wife of the deceased, the 1st appellant was aged 42 years and the amount awarded by the Tribunal towards loss of consortium to the 1st appellant is meagre. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation on behalf of him, either in person or through counsel.

8.Mr.D.Bhaskaran, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants

failed to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, a sum of Rs.4,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The deceased was aged 48 years at the time of accident and the appellants are entitled to only 25% enhancement towards future prospects. The Tribunal erroneously granted 30% enhancement towards future prospects. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

9.Mr.C.S.K.Sathish, learned counsel appearing for the 3rd respondent-Transport Corporation contended that the accident occurred in the year 2010 and in the absence of any material evidence with regard to avocation and income, the monthly income fixed by the Tribunal is excessive. The Tribunal considering entire materials available on record, has awarded a sum of Rs.7,59,450/- as compensation to the appellants, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

10.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and the learned counsel appearing for the 3rd respondent-Transport Corporation and perused the entire materials on record.

11.From the materials available on record, it is seen that it is the contention of the appellants that the deceased was running a Flour Mill under the name and style of M/s. Sri Mangadu Kamatchi, Zamin Pallavaram, Chennai - 600 043 and was earning a sum of Rs.25,000/- per month. To prove the said contention, the appellants produced Exs.P7 to P9. The Tribunal did not accept Exs.P7 to P9 on the ground that the appellants have not produced any proof such as license, professional tax receipt and other statutory documents which are required to run the flour mill and fixed a sum of Rs.4,500/- 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. Considering the year of accident, a sum of Rs.7,000/- per month is fixed as notional income of the deceased. The deceased was aged 48 years at the time of accident and the Tribunal has granted 30% enhancement towards future prospects, which is not correct. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellants are entitled to only 25% enhancement towards future prospects. The Tribunal has applied multiplier '13' and deducted 1/4th towards personal expenses of the deceased and the same are proper. In view of the above, the compensation awarded by the Tribunal

towards loss of dependency is modified to Rs.10,23,750/- {Rs.8,750/- [(Rs.7,000/- + Rs.1,750/- (25% of Rs.7,000/-)] X 12 X 13 X 3/4}. The Tribunal has awarded a meagre sum of Rs.25,000/- towards loss of consortium to the 1st appellant and the same is enhanced to Rs.40,000/-. The amounts awarded by the Tribunal towards loss of love and affection, funeral expenses and loss of estate are meagre and the same are enhanced to Rs.80,000/-, Rs.15,000/- and Rs.15,000/- respectively. The amount awarded by the Tribunal towards transportation is just and reasonable and hence, the same is confirmed. 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	6,84,450/-	10,23,750/-	Enhanced
2.	Loss of consortium to the 1 st appellant	25,000/-	40,000/-	Enhanced
3.	Loss of love and affection to appellants 2 & 3	25,000/-	80,000/-	Enhanced
4.	Funeral expenses	10,000/-	15,000/-	Enhanced
5.	Loss of estate	10,000/-	15,000/-	Enhanced
6.	Transportation	5,000/-	5,000/-	Confirmed
	Total	Rs.7,59,450/-	Rs.11,78,750/-	enhanced by Rs.4,19,300/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,59,450/- is hereby enhanced to Rs.11,78,750/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company and the 3rd respondent-Transport Corporation are directed to deposit 50% each of the enhanced award amount now determined by this Court, i.e., Rs.5,89,375/- each along with proportionate interest and costs, less the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1896 of 2010 on the file of the Motor Accidents Claims Tribunal, Chief Small Causes Court, Chennai. On such deposit, the appellants 1 and 2 are permitted to withdraw the respective share of the enhanced award amount 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. The share of the minor 3rd appellant is directed to be

deposited in any one of the Nationalized Banks, till the minor 3rd appellant attains majority. On such deposit, the 1st appellant, being the mother of the minor 3rd appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 3rd appellant. The learned counsel appearing for the appellants submitted that the 4th appellant died and the appellants 1 to 3 are the only legal heirs of the deceased 4th appellant and the amount apportioned by the Tribunal to the 4th appellant may be given to the 1st appellant, who is the daughter-in-law of the 4th appellant. It is for the appellants 1 to 3 to file a petition before the Tribunal enclosing the legal heirship certificate and prove that they are the only legal heirs of the deceased 4th appellant. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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

+2cc to Mr.N.M.Muthurajan, Advocate, Sr.No. 38146

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C.M.A.No.632 of 2014

SS(CO)

RMP(17/05/2021)

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