

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3243 of 2019

Ramasamy (died)

1.Sellammal

2.Preethi ... Appellants

Vs.

1.Dhandapani

2.ICICI Lombard General
Insurance Company Ltd.
S.F.No.6/5, Block No.7
Ward-C, Swarnambigai plaza
Near new bus stand
Omalar road, Fairlands, Salem
Branch office at SP towers, 1st floor
Opposite Ramesh Theatre
Trichy main road, Namakkal.

3.Shanmugam

4.United India Insurance Co. Ltd.
SRS towers, 595, Mettur main road
Bhavani-638 301.

.. Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.03.2019 made in M.C.O.P.No.681 of 2013 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneedharan

For R2 : Mrs.R.Sreevidhya

For R4 : Mr.J.Chandran

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 19.03.2019 made in M.C.O.P.No.681 of 2013 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellants are claimants in M.C.O.P.No.681 of 2013 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal. They filed the said claim petition along with one Ramasamy, father of the deceased, claiming a sum of Rs.20,00,000/- as compensation for the death of one Palaniammal, who died in the accident that took place on 04.08.2012. Pending claim petition, the said Ramasamy died.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the drivers of the lorry as well as Toyota Qualis, belonging to the 1st respondent & 3rd respondent, fixed 20 : 80 contributory negligence on the part of the drivers of the respondents 1 & 3 respectively, awarded a sum of Rs.8,70,000/- as compensation to the appellants and directed both the 2nd respondent/ICICI Lombard General Insurance Company & 4th respondent/United India Insurance Company, being insurers of the said lorry & Qualis, to pay a sum of Rs.1,74,000/- & Rs.6,96,000/- i.e., 20 : 80 of the compensation to the appellants, respectively.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the deceased was aged 45 years at the time of accident and was earning a sum of Rs.15,000/- per month by doing agriculture on her own lands and also doing lorry transport business. The Tribunal without considering the same, fixed only a meagre sum of Rs.6,000/- per month as notional income of the deceased. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 4th respondent/United India Insurance Company contended that the appellants have not produced any document to prove the income of the deceased. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of

Rs.6,000/- per month as notional income of the deceased. The Tribunal after considering all the materials available on record, awarded compensation, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants as well as the 2nd respondent/ICICI Lombard General Insurance Company, 4th respondent/United India Insurance Company and perused the entire materials available on record.

8. It is the contention of the appellants that the deceased was aged 45 years at the time of accident and was earning a sum of Rs.15,000/- per month by doing agriculture on her own lands and doing lorry transport business. The appellants failed to prove the said contention. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2012 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.9,000/- per month is fixed as notional income of the deceased. As per Ex.P6/Post-mortem certificate, the deceased was aged 45 years at the time of accident. The Tribunal applied multiplier '14', granted 25% enhancement towards future prospects and deducted 1/3rd towards personal expenses, which are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is enhanced to Rs.12,60,000/- (Rs.9,000/- + 2250 [Rs.9,000/- X 25%] X 12 X 14 X 2/3). The Tribunal has not awarded any compensation towards loss of love and affection to the 1st appellant, mother of the deceased and hence, a sum of Rs.40,000/- is awarded towards loss of love and affection to the 1st appellant. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are 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:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced

1.	Loss of dependency + future prospects	6,72,000 1,68,000	12,60,000	Enhanced
2.	Loss of love and affection to the 1 st appellant	-	40,000	Granted
3.	Funeral expenses	15,000	15,000	Confirmed
4.	Loss of estate	15,000	15,000	Confirmed
	Total	8,70,000	13,30,000	Enhanced by Rs.4,60,000/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.8,70,000/- is hereby enhanced to Rs.13,30,000/- 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. Both the 2nd respondent/ICICI Lombard General Insurance Company & 4th respondent/United India Insurance Company, being insurers of the said lorry & Qualis are directed to deposit 20 : 80 of the enhanced award amount now determined by this Court i.e., Rs.2,66,000/- and Rs.10,64,000/- respectively, along with proportionate interest and costs, less the amount if any, already deposited by them, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge
The Motor Accident Claims Tribunal
Namakkal.

2.The Section Officer
V.R.Section
High Court, Chennai.

+2ccs to Mr.C.Paraneedharan , Advocate SR.No. 17843

+1cc to M/s.R.Sreevidhya , Advocate SR.No. 18794

C.M.A.No.3243 of 2019

A.SK(07.01.2021)



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