

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No. 3669 of 2019

1. Durga,  
W/o. Lae Santhosh Kumar
2. Thrizhanth (Minor)  
S/o. Late Santhosh Kumar (minor)
3. Thenmozhi,  
W/o. Ramachandran
4. Ramachandran,  
S/o. Kannan
5. Keerthi Umayal  
D/o. Late Santhosh Kumar (minor)

Minor petitioners 2 and 5 rep. By  
next friend mother Durga  
(1<sup>st</sup> petitioner)

All are residing at  
No.19/A, Seshamoolai Salai,  
Oozhiyapathu Neravy Village  
and Commune Karaikal.

... Appellants/ Petitioner

Vs.

1. Chinnapparaj,  
S/o. Selvaraj,  
No.707, Madhakoil Pudutheru,  
Perummandi, Kumbakonam Town.

2. United India Insurance Company,  
rep. By its Branch Manager,  
Office at No.42, Mutt Street,  
1<sup>st</sup> Floor, Kumbakonam Town,  
Tamil Nadu.

... Respondents/ Respondents

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PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the judgment and decree in M.C.O.P. No.139 of 2017, dated 04.06.2019 on the file of the Motor Accident Claims Tribunal, (District Court), Karaikal.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : R1 - No appearance

Mr.J.Chandran  
for R2

#### J U D G M E N T

The claimants are the appellants. Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, District Court, at Karaikal in MCOP No.139 of 2017, the appellants have filed the present Civil Miscellaneous Appeal before this Court seeking enhancement of compensation.

2. It is a case of fatal accident. The claimants are wife, children and parents of deceased. According to the appellants/claimants, on 26.01.2017 at about 03.45 p.m. when the deceased was riding his motorcycle bearing Regn.No.PY-01-CA-0363 at Bharathiyar Road, a van bearing Regn. No.TN-68-E-9501 owned by the 1<sup>st</sup> respondent, which was insured with the 2<sup>nd</sup> respondent came in opposite direction in rash and negligent manner and dashed against the deceased motorcycle, thereby the deceased succumbed to injuries. The deceased was working as a mason and at the time of death, he was 27 years old. He was the sole bread-winner of the family and earning a sum of Rs. 15,000/- per month. Hence, claiming the compensation of Rs.40 lakhs, the claim petition has been filed by the appellants.

3. The 1<sup>st</sup> respondent/owner of the vehicle remained exparte and the second respondent Insurance Company contested the claim petition on the ground that, the accident was taken place only due to the negligence of deceased, hence, the Insurance company is not liable to pay compensation. That apart, the compensation claimed by the claimants before the Tribunal is highly excessive and also disputed the monthly income of deceased.

4. In order to prove their claim, the Appellants/claimants examined the 1<sup>st</sup> appellant as P.W.1 and an eye-witness was examined as P.W.2 and marked as many as 9 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 the driver of van. Regarding quantum of compensation, the Tribunal had fixed the monthly income of deceased as Rs.9000/- and as the age of deceased was 32 years, adding 40% towards future prospects, deducting 1/4<sup>th</sup> towards personal expenses and applying the multiplier of 16, the Tribunal had arrived the loss of dependency as Rs.18,14,400/-. Towards loss of consortium, a sum of Rs.40,000/- was awarded for the 1<sup>st</sup> petitioner. Towards loss of love and affection, a sum of Rs.1 lakh was awarded. Towards funeral expenses, a sum of Rs.15,000/- was awarded and towards transport expenses, a sum of Rs.5000/- was awarded by the Tribunal. Totally, a sum of Rs.19,34,400/- has been granted as compensation. Not being satisfied with the same, the claimants have filed this Civil Miscellaneous Appeal before this Court.

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

7. The deceased was working as a mason, the accident has been taken place in the year 2017, and he was 32 years old at the time of accident. The Tribunal had fixed the monthly income of deceased as Rs.9000/- per month. Considering the fact that he was working as a mason, he can easily earn a sum of Rs.600/- per day, even assuming, the deceased was working for 20 days per month, he will get a monthly salary of Rs.12,000/-, but the Tribunal had only fixed a sum of Rs.9000/- without any reason whatsoever. Hence, the monthly income of deceased is fixed at Rs.12,000/- and future prospects as per the guideline issued by Hon'ble Supreme Court in the case of in the case of National Insurance CO.Ltd., /vs/ Pranay Sethi and others reported in 2017 (16) SCC 680, 40% of annual income must be added as future prospects, which comes to Rs.4,800/- per month. As there are five claimants, deducting 1/4<sup>th</sup> towards personal expenses, the notional monthly income can be arrived at Rs.12,600/- and applying multiplier of 16, the loss of dependency comes to Rs.24,19,200/- (Rs.12,600/- x 12 x 16). The 1<sup>st</sup> appellant being his wife, she is entitled to get a sum of Rs.40,000/- towards loss of consortium. The 2<sup>nd</sup> and 5<sup>th</sup> appellants are minor children of deceased, they are entitled for a parental consortium of Rs.40,000/- each. The 3<sup>rd</sup> and 4<sup>th</sup> claimants are parents, as the death of their son caused irreparable loss and mental agony, they are entitled for filial compensation of Rs.40,000/- each. That apart, for loss of estate, another sum of Rs.15,000/- can be granted. In the said circumstances, the award passed by the Tribunal is modified as follows :-

| Sl. No. | Headings                                            | Amount Awarded by the Tribunal<br>Rs. | Amount awarded by this Court | Award confirmed or enhanced |
|---------|-----------------------------------------------------|---------------------------------------|------------------------------|-----------------------------|
| 1       | Loss of income                                      | 18,14,400                             | 24,19,200                    | enhanced                    |
| 2       | Loss of consortium to the 1 <sup>st</sup> appellant | Nil                                   | 40,000                       | granted                     |
| 3       | Loss of love and affection for Appellants 2 to 5    | 1,00,000                              | 1,60,000                     | enhanced                    |
| 4       | Cremation charges                                   | 15,000                                | 15,000                       | confirmed                   |
| 5       | Transport expenses                                  | 5,000                                 | 5,000                        | confirmed                   |
| 6       | Loss of estate                                      | Nil                                   | 15,000                       | granted                     |
|         | Total                                               | 19,34,400                             | 26,54,200                    | enhanced                    |

Thus, the appellants are entitled to get a sum of Rs.26,54,200/- towards compensation instead of Rs.19,34,400/- awarded by the Tribunal.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.19,34,400/- is hereby enhanced to Rs.26,54,200/- 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 necessary Court fee, if any, on the enhanced compensation. The 2<sup>nd</sup> 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.

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Assistant Registrar(insp cell)

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Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,  
District Court, Karaikal.

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

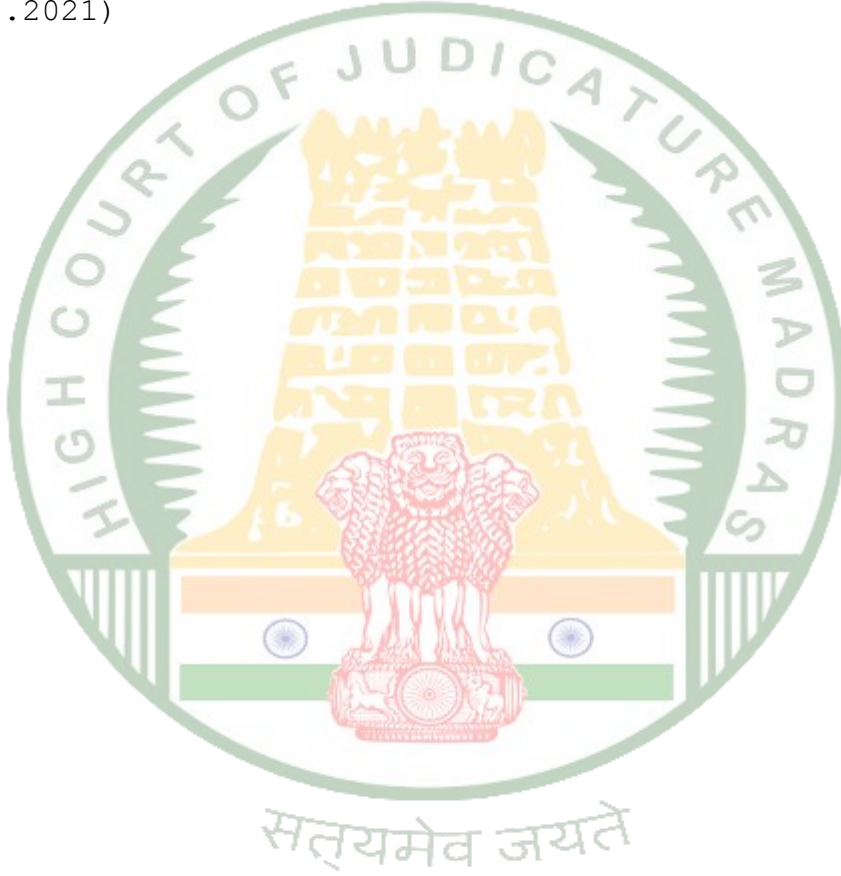
+1cc to Mr.K.Varadahakamaraj , Advocate SR.No. 36239

+1cc to Mr.J.Chandran , Advocate SR.No. 36020

C.M.A.No.3669 of 2019

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A.SK(21.01.2021)



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