

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2419 of 2017

1.Valarmathi

2.Minor Surendhar

3.Minor Swetha

(Minor appellants 2 & 3 rep. by their
mother, natural guardian/1st appellant)

4.Kannammal

... Appellants/Claimants

Vs.

1.P.Sankar

2.Reliance General Insurance Company Limited

Sri Lakshmi Complex, 1st floor
Bharathi street, Omalur main road
Swarnapuri, Salem.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.04.2016 made in M.C.O.P.No.759 of 2015 on the file of Motor Accidents Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.MA.P.Thangavel

For R2 : No appearance
R1 Exparte

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 01.04.2016 made in M.C.O.P.No.759 of 2015 on the file of Motor Accidents Claims Tribunal, Principal District Court, Namakkal.

2.The appellants are claimants in M.C.O.P.No.759 of 2015 on the file of Motor Accidents Claims Tribunal, Principal District Court, Namakkal. The appellants filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation for the death of one Nataraj, who died in the accident that took place on 03.11.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of Hero Honda Splendor plus belonging to the 1st respondent and directed both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said motorcycle to jointly and severally pay a sum of Rs.5,85,000/- as compensation to the appellants.

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/claimants contended that the deceased was earning a sum of Rs.15,000/- per month by working as tractor driver and marked Ex.P9/driving license to prove his avocation. The Tribunal without considering the same, fixed only a meagre sum of Rs.5,000/- per month as notional income of the deceased. The deceased was aged 45 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Though notice was served on the 2nd respondent and their name is printed in the cause list, there is no representation on behalf of them either in person or through counsel.

7.Heard the learned counsel appearing for the appellants and perused all the materials available on record.

8.It is the contention of the appellants that the deceased was earning a sum of Rs.15,000/- per month by working as tractor driver. They have marked Ex.P9/driving license of the deceased to prove the avocation. However, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the deceased holding that Ex.P9/driving license is not sufficient to prove the income of the deceased. The accident is of the year 2014 and the notional income fixed by the Tribunal is meagre. Hence, a

sum of Rs.10,000/- per month is fixed as notional income of the deceased. The Tribunal fixed the age of the deceased as 45 years at the time of accident as per Ex.P2/Post-mortem report and Ex.P7/death certificate, applied multiplier '14' and deducted 1/3rd towards personal expenses. The multiplier '14' applied by the Tribunal is correct. There are four dependants of the deceased and the Tribunal ought to have deducted 1/4th instead of 1/3rd towards personal expenses. The Tribunal has not granted any enhancement towards future prospects and the appellants are entitled to 25% enhancement towards future prospects. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.15,75,000/- (Rs.10,000/- + [Rs.10,000/- + 25%] x 12 x 14 x 3/4). A sum of Rs.10,000/- and Rs.5,000/- awarded by the Tribunal towards loss of consortium & funeral expenses are meagre and the same are hereby enhanced to Rs.40,000/- & Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. The amount awarded by the Tribunal towards loss of love & affection is just and reasonable and hence, the same is hereby 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 or reduced
1.	Loss of dependency	5,60,000	15,75,000	Enhanced
2.	Loss of consortium	10,000	40,000	Enhanced
3.	Funeral expenses	5,000	15,000	Enhanced
4.	Loss of love and affection	10,000	10,000	Confirmed
5.	Loss of estate	-	15,000	Granted
	Total	5,85,000	16,55,000	Enhanced by Rs.10,70,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,85,000/- is hereby enhanced to Rs.16,55,000/- together with

interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellants/claimants shall not be entitled for any interest for the delay period on the amount of Rs.10,70,000/- enhanced by this Court as per the order of this Court dated 27.07.2017 made in C.M.P.No.11586 of 2017 in C.M.A.SR.No.22177 of 2017. Out of the enhanced award amount, the 1st appellant being wife of the deceased is entitled to a sum of Rs.5,02,500/-, the appellants 2 & 3 being children of the deceased are entitled to a sum of Rs.4,17,500/- each and the 4th appellant being mother of the deceased is entitled to a sum of Rs.3,17,500/- as compensation. The respondents are directed to deposit the enhanced award amount now determined by this Court along with interest and costs jointly and severally, 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 1 and 4/claimants 1 and 4 are permitted to withdraw their respective share from the enhanced award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minors/appellants 2 & 3 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st appellant being the mother of the appellants 2 & 3/minors is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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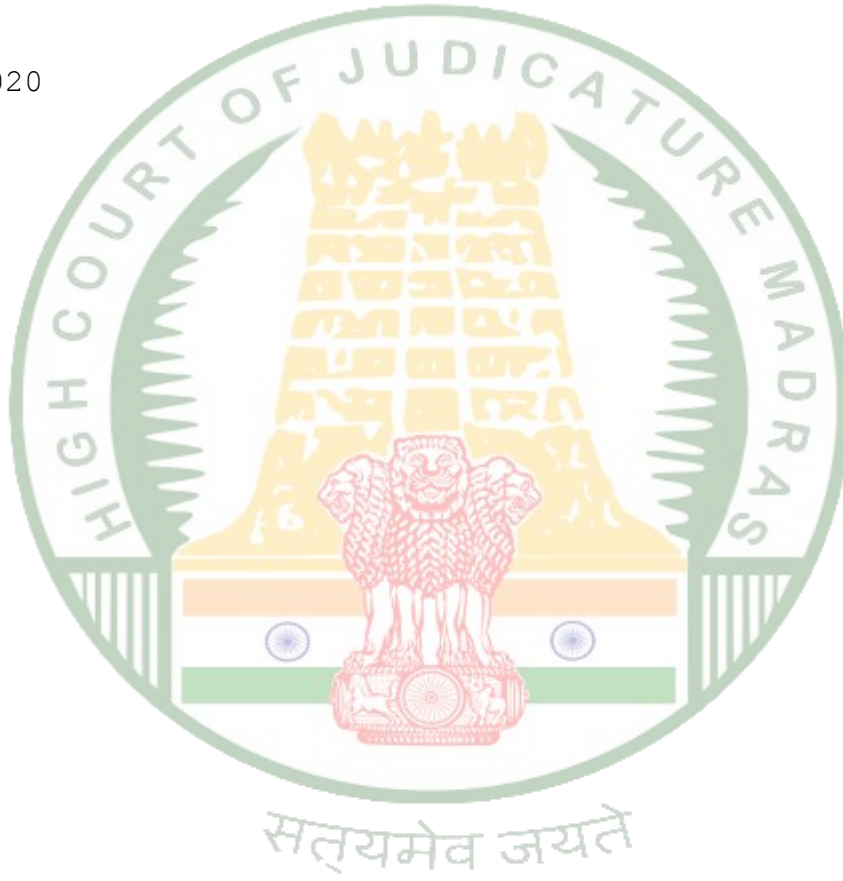
1.The Principal District Judge
The Motor Accident Claims Tribunal
Namakkal.

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

+1 cc to Mr.Thangavel Advocate sr4652

C.M.A.No.2419 of 2017

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