

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2663 of 2017

1.M.Janshi Rani @ Rani
2.M.Nagaraj
3.M.Murugaveni

.. Appellants

Vs.

1.J.Kanagaraj
(R1 remained exparte before the Tribunal
and hence notice to R1 is dispensed with)

2.Reliance General Insurance Co. Ltd.
'Rai's Tower' plot no.2504
2nd avenue, 2nd floor
(Next to Senthil Nursing Home)
Anna nagar, Chennai-40.

.. Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.01.2017 made in M.C.O.P.No.975 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

For Appellants : Ms.A.Subadra for Ms.M.Malar

For R2 : No appearance

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 24.01.2017 made in M.C.O.P.No.975 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

2.The appellants are claimants in M.C.O.P.No.975 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai. They filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Ilanciyan, who died in the accident that took place on

09.11.2013.

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 the mini lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said mini lorry to pay a sum of Rs.7,47,000/- 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 contended that the deceased was aged 55 years at the time of accident, she was a milk vendor and was earning a sum of Rs.10,000/- per month. The Tribunal without considering the same, fixed only a meagre sum of Rs.6,500/- per month as notional income of the deceased. The Tribunal has not granted any enhancement towards future prospects. The Tribunal has not awarded any compensation towards transportation and loss of estate. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Though notice has been served on the 2nd respondent/Insurance Company 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 the entire materials available on record.

8.It is the contention of the appellants that the deceased was aged 55 years at the time of accident, she was a milk vendor and was earning a sum of Rs.10,000/- per month. The appellants failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.6,500/- per month as notional income of the deceased. The accident is of the year 2013 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.P3/death certificate, the deceased was aged 55 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 10% enhancement towards future prospects. After applying multiplier '11' and deducting 1/3rd towards personal expenses, the compensation awarded by the Tribunal towards loss

of dependency is enhanced to Rs.8,71,200/- (Rs.9,000/- + 900 [Rs.9,000/- X 10%] X 12 X 11 X 2/3). The sum of Rs.1,50,000/- and Rs.25,000/- awarded by the Tribunal towards loss of love & affection to the appellants and funeral expenses are excessive and the same are hereby reduced to Rs.40,000/- each to the appellants 1 & 3/daughters of the deceased and Rs.15,000/- respectively. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. 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	5,72,000	8,71,200	Enhanced
2.	Loss of love and affection to the appellants 1 & 3	1,50,000	80,000	Reduced
3.	Funeral expenses	25,000	15,000	Reduced
4.	Loss of estate	-	15,000	Granted
	Total	7,47,000	9,81,200	Enhanced by Rs.2,34,200/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,47,000/- is hereby enhanced to Rs.9,81,200/- 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 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with 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.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.IV Judge

The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

2.The Section Officer

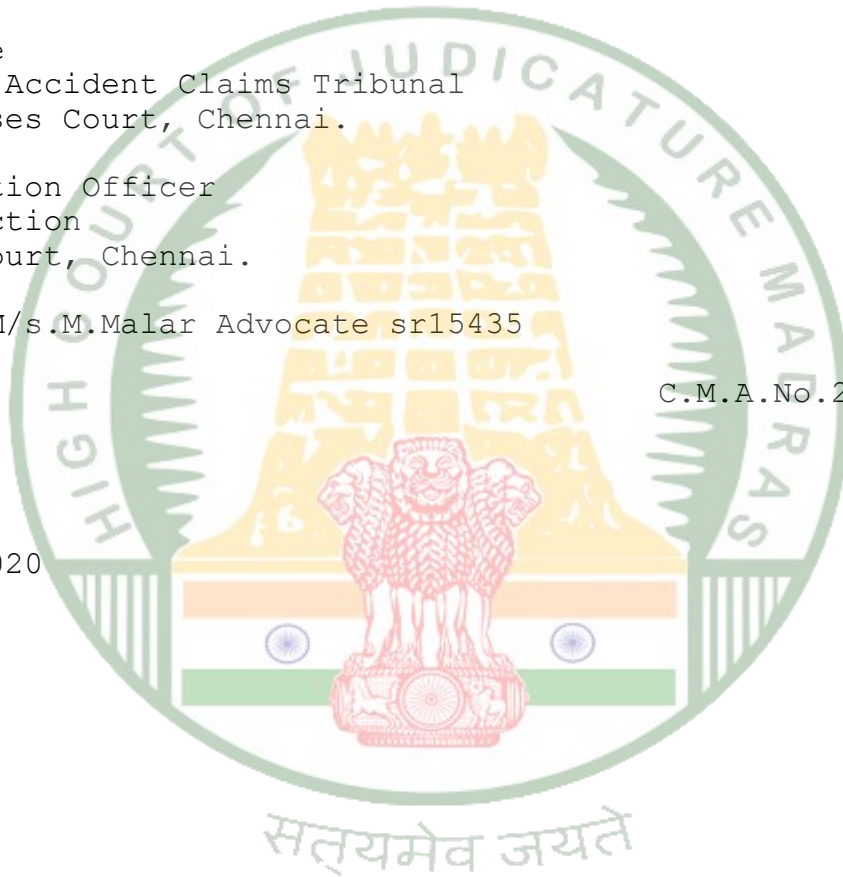
V.R.Section
High Court, Chennai.

+1 cc to M/s.M.Malar Advocate sr15435

C.M.A.No.2663 of 2017

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