

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2828 of 2017

1.Shanthi

2.Minor. Kowshika

3.Minor. Gogulakrishnan
(Minors Rep by guardian/mother Shanthi)

4.Chinnusamy ... Appellants/Petitioner

Vs.

1.Bijuphilip

2.M/s.New India Assurance Company Ltd.,
Sri Vari Shopping Mall, 2nd Floor,
No.2/91, New Bus Stand Road,
Meyyanur, Salem - 636 004. ... Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.11.2015 made in M.C.O.P.No.590 of 2013 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellants : Mr.Ma.Pa.Thangavel

For R2 : Ms.S.R.Sumathy

For R1 : Exparte

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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 23.11.2015 made in M.C.O.P.No.590 of 2013 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2.The appellants are claimants in M.C.O.P.No.590 of 2013 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal. They filed the said claim petition claiming a sum of Rs.30,00,000/- (amended vide Court order dated 23.01.2018 made in C.M.P.No.12058 of 2017 in C.M.A.Sr.No.84663 of 2016) as compensation for the death of one Ganesan, who died in the accident that took place on 23.01.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver cum owner of the Tata Indigo Car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said Tata Indigo Car to pay a sum of Rs.20,00,000/- as compensation to the appellants 1 to 3. The Tribunal dismissed the claim petition against the 4th appellant.

4.Not being satisfied with the quantum of compensation 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 aged 34 years at the time of accident and was earning a sum of Rs.15,000/- per month by working as Tailor in Tiruppur Aviram Garments. The Tribunal without considering the same has fixed only a meagre sum of Rs.6,000/- per month as notional income of the deceased. There are four dependents depending on the deceased and the Tribunal ought to have deducted 1/4th instead of 1/3rd towards personal expenses. The Tribunal erred in dismissing the claim petition against 4th appellant and has not granted any compensation towards loss of love & affection to 4th appellant, father of the deceased and loss of estate. 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 2nd respondent/Insurance Company contended that the appellants have not produced any documents to prove the avocation and income of the deceased. In the absence of any material evidence, with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.6,000/- as notional income of the deceased which is not meagre. The Tribunal after considering the materials available on record, has 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 learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8. It is the contention of the appellants that the deceased was aged 34 years at the time of accident and was earning a sum of Rs.15,000/- per month by working as a Tailor in Tiruppur Aviram Garments. The appellants have failed to prove the said contention. In the absence of any material evidence, with regard to avocation and income of the deceased, the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2013, the notional income fixed by the Tribunal is meagre and therefore a sum of Rs.8,000/- is fixed as notional income of the deceased. As per Ex.P15/post-mortem certificate and Ex.P16/death certificate, the deceased was aged 34 years at the time of accident. The Tribunal has granted 50% enhancement towards future prospects, which is excessive. The appellants are entitled to only 40% enhancement towards future prospects. The Tribunal applied multiplier '16' and deducted 1/3rd towards personal expenses. The 4th appellant, father of the deceased is also dependent of the deceased and is entitled to get compensation. The multiplier applied by the Tribunal is proper. There are four dependents, depending on the deceased and therefore 1/4th has to be deducted towards personal expenses. Thus, the loss of income awarded by the Tribunal is modified to Rs.16,12,800/- $[(Rs.8,000/- + 3,200 (Rs.8,000/- \times 40\%) \times 12 \times 16 \times 3/4)]$. The Tribunal awarded a sum of Rs.2,00,000/-, Rs.1,00,000/- and Rs.25,000/- towards loss of love & affection, loss of consortium and funeral expenses which are excessive and the same are hereby reduced to Rs.40,000/- each towards loss of love & affection to the appellants 2 & 3, Rs.40,000/- towards loss of consortium to the 1st appellant and Rs.15,000/- towards funeral expenses. The Tribunal has granted a sum of Rs.5,000/- towards transportation charges which is meagre and the same is hereby enhanced to Rs.10,000/-. The amounts awarded by the Tribunal towards medical bills and attendant charges are just and reasonable and hence the same are 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 income	11,52,000	16,12,800	Enhanced

2.	Loss of love and affection to the appellants 2 & 3	2,00,000	80,000	Reduced
3.	Loss of consortium to the 1 st appellant	1,00,000	40,000	Reduced
4.	Funeral expenses	25,000	15,000	Reduced
5.	Medical bills	9,25,555	9,25,555	Confirmed
6.	Transportation charges	5,000	10,000	Enhanced
7.	Attendant charges	20,000	20,000	Confirmed
	Total	Rs.24,27,555/-	Rs.27,03,355/-	Enhanced by - Rs.2,75,800 /-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.24,27,555/- is hereby enhanced to Rs.27,03,355/- 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. 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 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 & 4 are permitted to withdraw their respective shares from the enhanced award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor 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 is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

mtl

To

1.The Additional District Judge,
The Motor Accident Claims Tribunal
Namakkal.

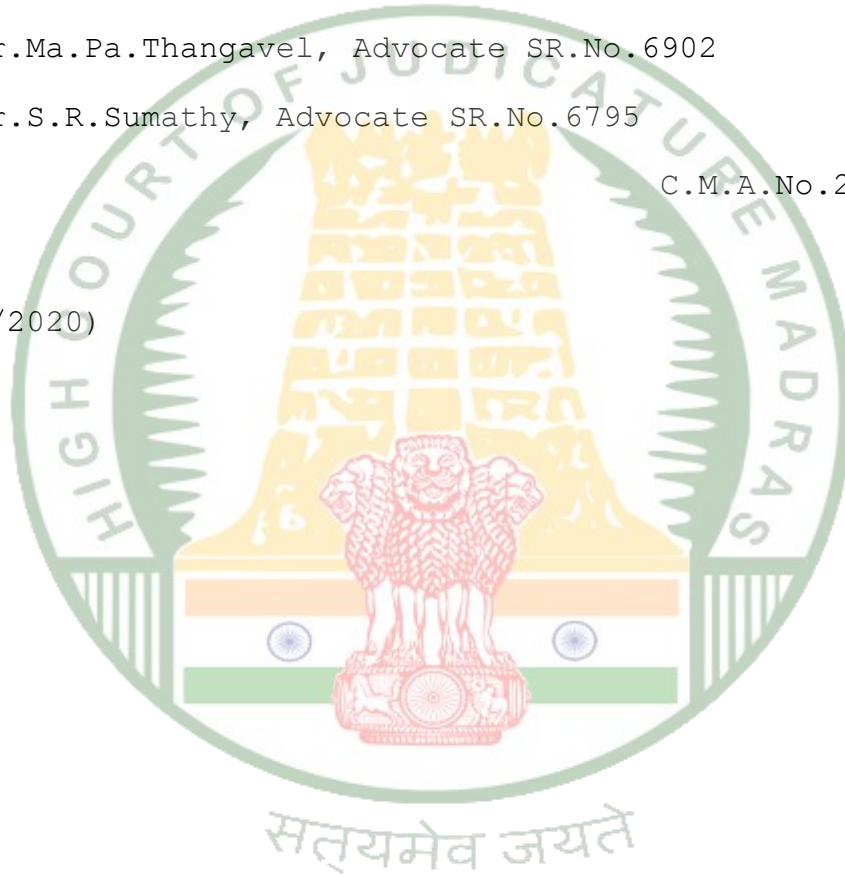
2.The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mr.Ma.Pa.Thangavel, Advocate SR.No.6902

+1cc to Mr.S.R.Sumathy, Advocate SR.No.6795

C.M.A.No.2828 of 2017

KK(CO)
GMY(25/09/2020)



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