

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3227 of 2017

1.Santhi
2.Minor. Agalya
3.Minor. DhineshKandh
(Minor appellants 2 and 3 are represented
by their mother, 1st appellant herein)
... Appellants/Claimants

Vs.

1.Indira
2.M/s.New India Insurance Company Limited,
Fort Main Road, Shevapet,
Salem - 2. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.04.2017 made in M.C.O.P.No.1820 of 2015 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Salem.

For Appellants : Mr.M.R.Thangavel
For R2 : Mr.J.Michael Visuvasam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted in the award dated 28.04.2017 made in M.C.O.P.No.1820 of 2015 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Salem.

2.The appellants are the claimants in M.C.O.P.No.1820 of 2015 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Salem. They filed the above said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of one Chandran @ Chandraganthi, who died in the accident that took place on 07.06.2015.

3.The Tribunal considering the pleadings, oral and

documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the recovery van belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the recovery van to pay a sum of Rs.7,80,000/- 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 at the time of accident the deceased was aged 39 years and was owning a JCB and was earning a sum of Rs.40,000/- per month. But the Tribunal fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased. The Tribunal has not granted any enhancement towards future prospects of the deceased. The Tribunal has not awarded any amount towards loss of estate. The amounts awarded by the Tribunal towards loss of consortium and loss of love and affection are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not produced any material evidence to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, a sum of Rs.6,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The appellants are not entitled to any enhancement towards future prospects of the deceased. The Tribunal considering the entire materials on record, has awarded a sum of Rs.7,80,000/- as compensation to the appellants, 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 entire materials on record.

8. It is the contention of the appellants that at the time of accident the deceased was aged 39 years and was owning a JCB and earning a sum of Rs.40,000/- per month. But they failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident occurred in the year 2015 and the monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.12,000/- per month is fixed as notional income of the deceased. The deceased was aged 39 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The

appellants are entitled to 40% enhancement towards future prospects of the deceased. In view of the same, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.20,16,000/- {Rs.16,800/- [Rs.12,000/- + Rs.4,800/- (40% of Rs.12,000/-)] X 12 X 15 X 2/3}. The Tribunal has awarded a meagre sum of Rs.20,000/- towards loss of consortium to the 1st appellant and the same is enhanced to Rs.40,000/-. The Tribunal has awarded a meagre sum of Rs.10,000/- each to the appellants 2 and 3 towards loss of love and affection and the same is enhanced to Rs.40,000/- each. The excessive amount of Rs.20,000/- awarded by the Tribunal towards funeral expenses is hereby reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has 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
1.	Loss of dependency	7,20,000/-	20,16,000/-	Enhanced
2.	Loss of consortium to the 1 st appellant	20,000/-	40,000/-	Enhanced
3.	Loss of love and affection to the appellants 2 and 3	20,000/-	80,000/-	Enhanced
4.	Funeral expenses	20,000/-	15,000/-	Reduced
5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.7,80,000/-	Rs.21,66,000/-	enhanced by Rs.13,86,000/-

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.7,80,000/- is hereby enhanced to Rs.21,66,000/- 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 the necessary Court fee on the enhanced amount of compensation now determined by this Court. 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 to the credit of M.C.O.P.No.1820 of 2015 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Salem. On such deposit, the 1st appellant is permitted to withdraw her respective share of the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 and 3 attain majority. On such deposit, the 1st appellant, being the mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants 2 and 3. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional District Judge,
Motor Accident Claims Tribunal,
Salem.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.C.Anbu, Advocate, S.R.No. 17087

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.16865

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C.M.A.No.3227 of 2017

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