

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.743 of 2017

1.Selvarani
2.Minor.Vishal
3.Minor.Lokesh
4.Muniammal Appellants/Petitioners
(Minor appellants 2 and 3 are represented
by their mother and next friend, Selvarani)

Vs.

1.D.Krishnaveni
2.The United India Insurance Company Limited,
No.235, New Military Road,
Avadi, Chennai - 600 116. Respondents/Respondents

(R1 remained exparte before Tribunal.
Hence, notice dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.01.2014 made in M.C.O.P.No.827 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee, Thiruvallur.

For Appellants : Ms.Y.Jayanthi Bhaskar
for Mr.J.Mahalingam

For R2 : Mr.C.Paranthaman

R1- Set Exparte before the Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 10.01.2014 made in M.C.O.P.No.827 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee, Thiruvallur.

2.The appellants are the claimants in M.C.O.P.No.827 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee, Thiruvallur. They filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Raja, who died in the accident that took place on 12.08.2012.

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 auto belonging to the first respondent and directed the respondents 1 and 2, being the owner and insurer of the auto respectively to jointly and severally pay a sum of Rs.8,24,928/- 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.

5.The learned counsel appearing for the appellants contended that the deceased was a mason and was earning a sum of Rs.600/- per day. The Tribunal fixed meagre sum of Rs.5,000/- per month as notional income of the deceased and granted meagre sum of Rs.7,19,928/- towards loss of dependency. The deceased was aged 28 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects of the deceased. There are four dependants of the deceased and the Tribunal ought to have deducted $1/4^{\text{th}}$ towards personal expenses instead of $1/3^{\text{rd}}$. The proper multiplier applicable is '17'. The Tribunal has not awarded any amount towards loss of estate. The amounts awarded by the Tribunal under other heads 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 that the deceased was earning a sum of Rs.600/- per day. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.5,000/- 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. The Tribunal has rightly deducted $1/3^{\text{rd}}$ towards personal expenses of the deceased. The proper multiplier applicable is '17' and the Tribunal erroneously adopted multiplier '18' for awarding compensation towards loss of dependency. The amounts awarded by the Tribunal under different heads are not meagre and the appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellants as well as the learned counsel appearing for the second respondent and perused the entire materials on record.

8. It is the contention of the appellants that the deceased was working as mason and was earning a sum of Rs.600/- per day. They failed to prove the said contention. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the deceased. The accident occurred in the year 2012 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.8,000/- per month is fixed as notional income of the deceased. The deceased was aged 28 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects of the deceased. The appellants are entitled to 40% enhancement towards future prospects. The proper multiplier applicable is '17' and the Tribunal erroneously adopted multiplier '18'. There are four dependants of the deceased and the Tribunal erroneously deducted $\frac{1}{3}^{\text{rd}}$ towards personal expenses of the deceased. The Tribunal ought to have deducted $\frac{1}{4}^{\text{th}}$ towards personal expenses of the deceased. In view of the above, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.17,13,600/- {Rs.11,200/- [Rs.8,000/- + Rs.3,200/- (40% of Rs.8,000/-)] X 12 X 17 X $\frac{3}{4}$ }.

9. The Tribunal has awarded a sum of Rs.50,000/- towards loss of consortium to the first appellant, which is excessive and the same is reduced to Rs.40,000/-. The Tribunal has awarded meagre sum of Rs.15,000/- towards transportation and funeral expenses and the same is modified as the appellants are entitled to a sum of Rs.5,000/- towards transportation and Rs.15,000/- towards funeral expenses. The amounts awarded by the Tribunal towards loss of love and affection is just and reasonable and hence, the same is confirmed. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- 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
1.	Loss of dependency	7,19,928/-	17,13,600/-	Enhanced
2.	Loss of consortium	50,000/-	40,000/-	Reduced

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
3.	Transportation & Funeral expenses	15,000/-	5,000/-	Enhanced
			15,000/-	Enhanced
4.	Loss of love and affection	40,000/-	40,000/-	Confirmed
5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.8,24,928/-	Rs.18,28,600/-	enhanced by Rs.10,03,672/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,24,928/- is hereby enhanced to Rs.18,28,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 and 2 are jointly and severally 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.827 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee, Thiruvallur. On such deposit, the appellants 1 and 4 are permitted to withdraw their respective share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate 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 is directed to be deposited in any one of the Nationalized Bank, till the minor appellants 2 and 3 attain majority. On such deposit, the first 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. It is made clear that the appellants are not entitled for any interest for Rs.10,03,672/- the amount now enhanced by this Court, as per the order of this Court dated 14.02.2017 made in M.P.No.1 of 2015 in C.M.A.SR.No.38872 of 2015. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The III Additional District Judge,
Motor Accident Claims Tribunal,
Poonamallee,
Thiruvallur.

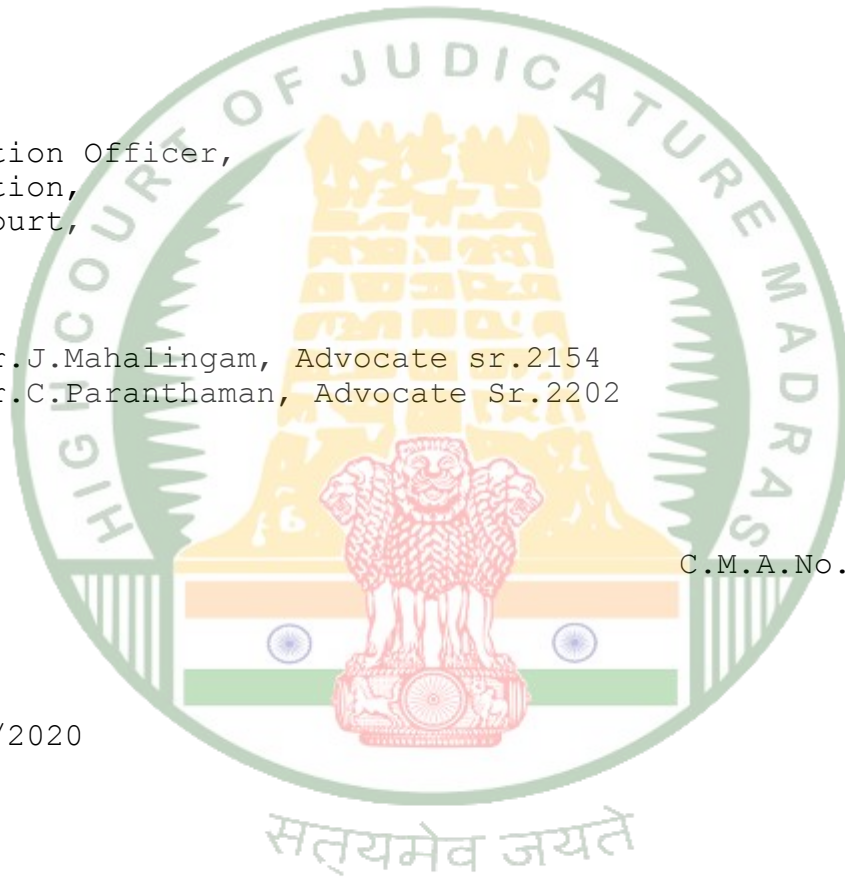
Copy to

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

+2cc to Mr.J.Mahalingam, Advocate sr.2154
+1cc to Mr.C.Paranthaman, Advocate Sr.2202

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