



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.800 of 2021

1.B.Saraswathy @ Jeevitha
2.D.Vasanth
3.Minor. B.Yokesh .. Appellants/Claimants
(Minor 3rd appellant represented by his next friend and
Mother, B,Saraswathy @ Jeevitha, 1st appellant herein)

Vs.

1.S.Manikandan
(No relief sought against R1.
Hence, notice to R1 dispensed with)

2.The Divisional Manager,
New India Assurance Company Limited,
Motor Third Party Claims Office,
No.1, Officer Lane,
C.S.I. Building, IInd Floor,
Vellore. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.08.2019 made in M.C.O.P.No.242 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Kanchipuram.

For Appellants : Mr.M.Sivakumar
for Mr.C.Prabakaran

For R2 : Ms.S.R.Sumathi

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 19.08.2019 made in M.C.O.P.No.242 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Kanchipuram.



3.The appellants are the claimants in M.C.O.P.No.242 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Kanchipuram. They filed the above said claim petition, claiming a sum of Rs.40,00,000/- as compensation for the death of one D.Baskar, who died in the accident that took place on 08.05.2014.

4.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 car owned by 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.26,91,760/- as compensation to the appellants at the first instance and recover the same from the 1st respondent.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellants contended that at the time of accident the deceased was aged 34 years, working as Assistant in Government Electricity Department at Kanchipuram and was earning a sum of Rs.24,500/- per month. To prove the avocation and income, the appellants marked the salary certificate of the deceased as Ex.P10 and examined one Vanitha, Junior Assistant, TNEB Office, Kanchipuram. But the Tribunal fixed a meagre sum of Rs.13,655/- per month as notional income of the deceased. The Tribunal ought to have fixed the monthly income of the deceased at Rs.17,513/- as per Ex.P10 and awarded compensation. The amount awarded by the Tribunal towards loss of consortium is meagre. The Tribunal failed to award any amount towards loss of love and affection and prayed for enhancement of compensation.

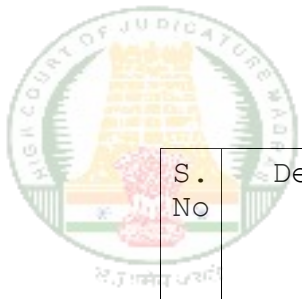
7.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal after considering Ex.P10 & evidence of P.W.3/co-worker of the deceased, fixed a sum of Rs.13,655/- as monthly income of the deceased and the same is not meagre. The Tribunal has awarded a sum of Rs.40,000/- towards loss of consortium and the same is not meagre. The Tribunal has granted a sum of Rs.70,000/- under conventional heads and hence, the appellants are not entitled to any amount towards loss of love and affection. The Tribunal considering entire materials on record, has awarded a sum of Rs.26,91,760/- as compensation to the appellants and the same is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.



8. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent- Insurance Company and perused the entire materials on record.

9. It is the case of the appellants that at the time of accident the deceased was aged 34 years, working as Assistant in Government Electricity Department at Kanchipuram and was earning a sum of Rs.24,500/- per month. To prove the avocation and income of the deceased, the appellants marked the salary certificate of the deceased as Ex.P10 and examined one Vanitha, Junior Assistant, TNEB Office, Kanchipuram. The Tribunal after considering Ex.P10 & evidence of P.W.3, held that the deceased was getting only a sum of Rs.13,655/- per month as salary after deducting a sum of Rs.3,858/- from his gross monthly income of Rs.17,513/-. The reason given by the Tribunal for fixing the monthly income of the deceased at Rs.13,655/- is not correct. The gross income has to be taken for awarding compensation towards loss of dependency. The appellants are entitled to compensation towards loss of dependency by fixing the gross salary of Rs.17,513/-, rounded off to Rs.17,500/- as his monthly income. The deceased was aged 35 years at the time of accident. The Tribunal following the judgments of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] and 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], rightly applied multiplier '16' and granted 50% enhancement towards future prospects of the deceased. There are three dependants of the deceased and the Tribunal rightly deducted 1/3rd towards personal expenses of the deceased. Thus, by fixing Rs.17,500/- per month as notional income of the deceased, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.33,60,000/- {Rs.26,250/- [Rs.17,500/- + Rs.8,750/- (50% of Rs.17,500/-)] X 12 X 16 X 2/3}. The Tribunal failed to award any amount towards loss of love and affection. The minor 3rd appellant, son of the deceased is entitled to a sum of Rs.40,000/- towards loss of love and affection. The amounts awarded by the Tribunal under other heads are 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
1.	Loss of dependency	26,21,760/-	33,60,000/-	Enhanced



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
2.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection	-	40,000/-	Granted
	Total	Rs.26,91,760/-	Rs.34,70,000/-	Enhanced by Rs.7,78,240/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.26,91,760/- is hereby enhanced to Rs.34,70,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the 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.242 of 2014 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Kanchipuram, at the first instance and recover the same from the 1st respondent. On such deposit, the appellants 1 & 2 are permitted to withdraw their respective share of the 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 3rd appellant is directed to be deposited in any one of the Nationalized Banks, till the minor 3rd appellant attains majority. On such deposit, the 1st appellant, being the Mother of the minor 3rd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor 3rd appellant. No costs.

Sd/-
Deputy Registrar (AD II)

//True copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court,
Kanchipuram.

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

+1cc to Mr.C.Prabakaran, Advocate SR.No.17354

C.M.A.No.800 of 2021

KV (CO)
GMY (20/10/2021)