



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.140 OF 2021

1.Nataraj @ Natarajan
2.Palaniammal
3.Nathiya

.. Appellants

Vs.

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

2. Annai Indane Service,
No.390, Trichy Road,
Singanallur,
Coimbatore - 641 005.

3. United India Insurance Company Limited,
Coimbatore - 18.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.03.2020 made in M.C.O.P.No.25 of 2019 on the file of the Motor Accident Claims Tribunal, Sub Court, Avinashi.

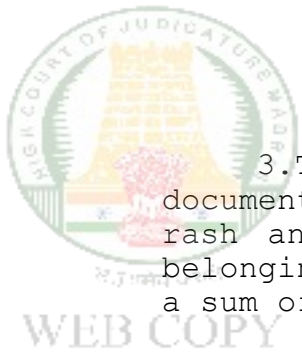
For Appellants : Mr.S.Kaithamalai Kumaran

For R3 : Ms.I.Malar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 13.03.2020 made in M.C.O.P.No.25 of 2019 on the file of the Motor Accident Claims Tribunal, Sub Court, Avinashi.

2.The appellants are the claimants in M.C.O.P.No.25 of 2019 on the file of the Motor Accident Claims Tribunal, Sub Court, Avinashi. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Velliangiri, who died in the accident that took place on 21.08.2010.



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 Eicher Lorry belonging to 2nd respondent and directed the 3rd respondent to pay a sum of Rs.9,67,200/- as compensation to the appellants.

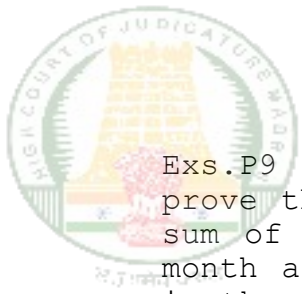
4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that at the time of accident the deceased was aged 24 years, a Powerloom Owner and was earning a sum of Rs.20,000/- per month. To prove the avocation and income, the appellants produced Exs.P9 and P10, Identity Card and Delivery Note respectively. But the Tribunal failed to consider Exs.P9 and P10 and fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased and awarded compensation towards loss of dependency. There are three dependants of the deceased and the Tribunal ought to have deducted 1/3rd towards personal expenses of the deceased instead of deducting 50%. The amount awarded by the Tribunal towards loss of love and affection and funeral expenses are meagre. The Tribunal failed to award any amount towards loss of estate and prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the 3rd respondent contended that the appellants have not produced any material evidence to prove that he was running a Powerloom Godown and was earning a sum of Rs.20,000/- per month. 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 deceased was a bachelor at the time of accident and 50% deduction made by the Tribunal towards personal expenses of the deceased is proper. The Tribunal considering the entire materials on record, has awarded a total sum of Rs.9,67,200/- 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.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 3rd respondent and perused the entire materials on record.

8.From the materials available on record it is seen that it is the case of the appellants that at the time of accident the deceased was aged 24 years, was a Powerloom Owner and was earning a sum of Rs.20,000/- per month. To prove the avocation and income of the deceased, the appellants produced Exs.P9 and P10, Identity Card and Delivery Note. The Tribunal considering



Exs.P9 and P10, held that Exs.P9 and P10 are not sufficient to prove that the deceased was a Powerloom Owner and was earning a sum of Rs.20,000/- per month and fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident occurred in the year 2010 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident, age and avocation of the deceased, a sum of Rs.9,000/- per month is fixed as notional income of the deceased. The deceased was a bachelor at the time of accident and the Tribunal rightly deducted 50% towards personal expenses of the deceased. The deceased was aged 24 years at the time of accident. The Tribunal granted 40% enhancement towards future prospects and applied multiplier '18' and the same are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.13,60,800/- {Rs.12,600/- [Rs.9,000/- + Rs.6,600/- (40% of Rs.9,000/-)] X 12 X 18 X 1/2}. The Tribunal failed to award any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amounts awarded by the Tribunal under other heads 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
1.	Loss of dependency	9,07,200/-	13,60,800/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of love and affection	40,000/-	40,000/-	Confirmed
4.	Transportation	5,000/-	5,000/-	Confirmed
5	Loss of estate	-	15,000/-	Granted
	Total	Rs.9,67,200/-	Rs.14,35,800/-	Enhanced by Rs.4,68,600/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,67,200/- is hereby enhanced to Rs.14,35,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd 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.25 of 2019 on the file of the Motor Accident Claims Tribunal, Sub Court, Avinashi. On such deposit, the appellants



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. No costs.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

krk

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Avinashi.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.7169

C.M.A.No.140 of 2021

SSV(CO)
CS/02/09/2021