



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.290 of 2021

1.Dhanalakshmi
2.Tamilkodi
3.Chandira
4.Palanisamy

.. Appellants/Petitioners

Vs.

1.Minor. Harshitha
(Minor 1st respondent represented by
her father and next friend Venugopal)

2.United India Insurance Company Limited,
No.2, Dr.Sankaran Road,
Namakkal.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.10.2019 made in M.C.O.P.No.1424 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellants : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneedharan

For R2 : 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 03.10.2019 made in M.C.O.P.No.1424 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2.The appellants are the claimants in M.C.O.P.No.1424 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal. They filed the above said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the death of one Athayammal, who died in the accident that took place on 08.04.2017.



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 bus belonging to 1st respondent and directed the 2nd respondent to pay a sum of Rs.2,10,000/- as compensation to the appellants.

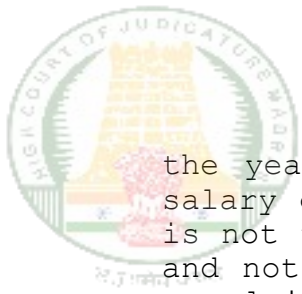
4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that at the time of accident the deceased was aged 82 years, working as Agricultural Coolie and was earning a sum of Rs.7,000/- per month. But the Tribunal fixed a meagre sum of Rs.4,000/- per month as notional income of the deceased and awarded compensation towards loss of dependency. The Tribunal failed to award any amount towards parental consortium and loss of love and affection. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the 2nd 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.4,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The deceased was aged 82 years at the time of accident and the monthly income fixed by the Tribunal is excessive. The Tribunal considering entire materials on record, has awarded a sum of Rs.2,10,000/- as compensation to the appellants, which is highly excessive. 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 through Video Conferencing 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 82 years, working as Agricultural Coolie and was earning a sum of Rs.7,000/- 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 considering the year of accident and nature of work done by the deceased, fixed a sum of Rs.4,000/- per month as notional income of the deceased and the same is meagre. The accident occurred in



the year 2017. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. It is not the case of the respondents that deceased was not working and not earned any income. Hence, a sum of Rs.7,000/- per month as claimed by the appellants in the claim petition is fixed as notional income of the deceased. The deceased was aged 82 years at the time of accident and the multiplier '5' applied and 1/4th deduction made by the Tribunal towards personal expenses of the deceased are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.3,15,000/- [Rs.7,000/- X 12 X 5 X $\frac{3}{4}$]. The Tribunal has not awarded any amount towards loss of love and affection. The appellants are entitled to a sum of Rs.40,000/- towards loss of love and affection. The amounts awarded by the Tribunal towards funeral expenses and loss of estate 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	1,80,000/-	3,15,000/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Loss of love and affection	-	40,000/-	Granted
	Total	Rs.2,10,000/-	Rs.3,85,000/-	Enhanced by Rs.1,75,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,10,000/- is hereby enhanced to Rs.3,85,000/- 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.1424 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal. 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.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

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

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

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.11617

C.M.A.No.290 of 2021

SPD(CO)
CB(16/11/2021)