



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.896 of 2021

1. Shenbagam

2. Minor Keerthana

(represented by her mother and next
friend, 1st appellant/Mrs.Shenbagam)

3. Chinnaponnu

Murugesan (Died)

(amended as per order in M.P.No.2/20
dated 07.12.2020)

.. Appellants

Vs.

1.S.Venthan

2.M.Pavunu

3. The New India Assurance Company Limited,
Motor III Party Claims Office,
No.232, N.S.C Bose Road,
Bombay Mutual Building, 6th floor,
Chennai - 1.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 07.12.2020 made in M.C.O.P. No.2860 of 2017, on the file of the Special Sub Court No.1, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai.

For Appellants : Mr.K.Varadhakamaraj

For Respondents : Mr.J.Chandran (For R3)



J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

WEB COPY This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 07.12.2020 made in M.C.O.P. No.2860 of 2017, on the file of the Special Sub Court No.1, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai.

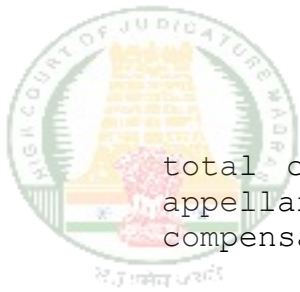
2.Originally the appellants-claimants along with one Murugesan/4th claimant, filed M.C.O.P.No.2860 of 2017, on the file of the Special Sub Court No.1, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai, claiming a sum of Rs.70,00,000/- as compensation for the death of one Murugan who died in the accident that took place on 05.05.2017. Pending claim petition, the 4th claimant/father of the deceased Murugan died and the claim petition was amended as per order in M.P.No.2/2020 dated 07.12.2020.

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 Tata Ace Car owned by the respondents 1 and 2 and directed the 3rd respondent as insurer of the said Car to pay a sum of Rs.19,42,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 07.12.2020 made in M.C.O.P. No.2860 of 2017, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased Murugan was working as a Plumber and was earning a sum of Rs.900/- per day. The Tribunal erred in fixing only a meagre sum of Rs.10,000/- per month as notional income of the deceased, without considering the evidence of P.W.1 who deposed about the income of the deceased. The Tribunal ought to have awarded more compensation under different heads. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that in the absence of any evidence by the appellants to prove the avocation and income of the deceased Murugan, the Tribunal fixed a sum of Rs.10,000/- per month as notional income and the same is not meagre. The



total compensation awarded by the Tribunal is not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants as well as the 3rd respondent-Insurance Company and perused the materials available on record.

8. It is the case of the appellants that at the time of accident, the deceased Murugan was aged 34 years, working as a Plumber and was earning a sum of Rs.900/- per day. They did not file any document to prove the same. In the absence of any evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased Murugan. The same is meagre. The accident is of the year 2017. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Considering the year of accident and nature of work done by the deceased, the notional income fixed by the Tribunal is enhanced to Rs.15,000/- per month. The Tribunal considering the fact that the deceased was aged 34 years at the time of accident, rightly granted 40% enhancement towards future prospects, applied the multiplier '16' and deducted 1/3rd towards personal expenses of the deceased, as there are three dependents of the deceased. Hence, by fixing the monthly income at Rs.15,000/-, granting 40% enhancement towards future prospects, applying the multiplier '16' and after deducting 1/3rd towards personal expenses of the deceased, the amounts granted by the Tribunal towards loss of dependency is modified to Rs.26,88,000/- {[Rs.15,000/- + Rs.6,000/- (40% of Rs.15,000/-)] x 12 x 16 x 2/3}. This Court is of the considered view that 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	17,92,000/-	26,88,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed



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3.	Loss of love and affection to appellants 2 and 3	75,000/-	75,000/-	Confirmed
4.	Transportation charges	5,000/-	5,000/-	Confirmed
5.	Loss of estate	15,000/-	15,000/-	Confirmed
6.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	19,42,000/-	28,38,000/-	Enhanced by Rs.8,96,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.19,42,000/- is enhanced to Rs.28,38,000/- 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, 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.2860 of 2017. On such deposit, the appellants 1 and 3 are permitted to withdraw their respective share of the award amount, now determined by this Court, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor 2nd appellant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st appellant, mother of the minor 2nd appellant is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd appellant. No costs.

Sd/-
Assistant Registrar (J)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Special Subordinate Judge No.I,
(Motor Accident Claims Tribunal),
Small Causes Court, Chennai.



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

+1CC to Mr.J.Chandran, Advocate, Sr.No.19278

+1CC to Mr.K.Varadhakamaraj, Advocate, Sr.No.18925

C.M.A.No.896 of 2021

SSN (CO)

K.RK. (15.11.2021)