



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.903 of 2021

1.Natesan

2.Nachayee

.. Appellants/Claimants

Vs.

1.K.M.Chandran

2.The Divisional Manager,
M/s.United India Insurance Company Limited,
146-E, Kumar Complex, Anna Salai,
Tiruchengode Taluk,
Namakkal District.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 22.12.2020 made in M.C.O.P.No.6 of 2014, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Tiruchengode.

For Appellants	:	Mr.T.S.Arthanareeswaran for Mr.C.Paraneedharan
For Respondents	:	M/s.I.Malar (For R2)

J U D G M E N T

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

This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 22.12.2020 made in M.C.O.P.No.6 of 2014, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Tiruchengode.

2.The appellants-claimants, filed M.C.O.P.No.6 of 2014, on the file of the Sub Court, (Motor Accidents Claims Tribunal), Tiruchengode, claiming a sum of Rs.10,00,000/- as compensation for the death of one Sakthivel who died in the accident that took place on 17.08.2010.



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 Lorry owned by the 1st respondent and directed the 2nd respondent as insurer of the said Bus to pay a sum of Rs.7,10,400/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 22.12.2020 made in M.C.O.P.No.6 of 2014, 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 Sakthivel was working as a Bore well Driller and was earning a sum of Rs.5,000/- per month. The deceased was the sole earning member of the family. Having lost their only son, the appellants are struggling to meet their day-to-day expenses. The Tribunal ought to have considered the same and granted more compensation towards loss of income. The Tribunal failed to award any amount towards loss of love and affection to the appellants who are the parents of the deceased. The total compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any evidence by the appellants to prove the avocation and income of the deceased Sakthivel, the Tribunal excessively fixed a sum of Rs.4,500/- per month as notional income. 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 2nd 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 Sakthivel was aged 21 years, working as a Helper at M/s.Sapthagiri Borewells and was earning a sum of Rs.5,000/- per month, along with other allowances. Except examining P.W.2 and P.W.3, the appellants did not file any document to prove the avocation and income of the deceased. In the absence of any evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased Sakthivel. The accident is of the year 2010. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Though the appellants have claimed that at the time of accident, the



deceased Sakthivel was earning a sum of Rs.5,000/- per month, considering the year of accident, age and nature of work done by the deceased, the notional income fixed by the Tribunal is enhanced to Rs.6,500/- per month. The Tribunal considering the fact that the deceased was a Bachelor, aged 21 years at the time of accident, rightly granted 40% enhancement towards future prospects, applied the multiplier '18' and deducted 50% towards personal expenses of the deceased. Hence, by fixing the monthly income at Rs.6,500/-, granting 40% enhancement towards future prospects, applying the multiplier '18' and after deducting 50% towards personal expenses of the deceased, the amounts granted by the Tribunal towards loss of dependency is modified to Rs.9,82,800/- {[Rs.6,500/- + Rs.2,600/- (40% of Rs.6,500/-)] x 12 x 18 x 1/2}. The Tribunal failed to award any amount towards loss of love and affection to the appellants. The appellants 1 and 2, who are the parents of the deceased are each entitled to a sum of Rs.40,000/- towards loss of love and affection. 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.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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	6,80,400/-	9,82,800/-	Enhanced
2.	Loss of love and affection	-	80,000/-	Granted
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	7,10,400/-	10,92,800/-	Enhanced by Rs.3,82,400/-



10. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.7,10,400/- is enhanced to Rs.10,92,800/- 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, 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.6 of 2014. On such deposit, the appellants 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 appellants are directed to pay the necessary court fee on the enhanced award amount. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Tiruchengode.

Copy to:

The Section Officer,
VR Section,
High Court, Madras

+2 ccs to Mr.T.S.Arthanareeswaran, Advocate Sr.NO. 19015

+1 cc to M/s.I.Malar , Advocate Sr.NO. 19111

C.M.A.No.903 of 2021

SSI (CO)

A.SK(29.10.2021)