

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.1375 OF 2020

1. Latha
W/O.Late Subramaniam
2. Pushpavalli
3. Balakrishnan
4. Minor Dharsith
5. Minor Larshini
(A4 & A5 are rep. by their next friend and
Guardian A1)

.. Appellants/
Petitioners

Vs.

1. Latha
W/O.Palanivel
2. National Insurance Co., Ltd.,
2nd Floor, 81-D, North Car Street,
Tiruchengode, Namakkal District.

.. Respondents/
Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to set side the Judgement and Decree made in MCOP No.452 of 2014, dated 28.11.2019, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondent 2 : Mr.J.Chandren

J U D G M E N T

(The case has been heard through video conference)

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned Award dated 28.11.2019, passed by the Motor Accidents Claims Tribunal, Subordinate Court, Tiruchengode in M.C.O.P.No.452 of 2014.

2. The appellants/claimants are the dependents of the deceased Subramaniam who died on 27.05.2014, as a result of an accident caused by the vehicle owned by the first respondent and insured with the second respondent. The appellants/claimants being not satisfied with the quantum of compensation awarded by the Tribunal, have preferred this appeal seeking for enhancement. Details of the compensation awarded by the Tribunal under the impugned Award are as follows:

Sl.No .	Heads	Amount in Rs.
1.	Loss of dependency	15,12,000
2.	Loss of consortium	40,000
3.	Loss of Estate	15,000
4.	Funeral Expenses	15,000
	Total	15,82,000
	Less: 20 % Contributory Negligence	12,65,600

3. The deceased Subramaniam was a driver aged 36 years at the time of the accident, which happened on 27.05.2014. The cause of the accident had not been disputed by the respondents as no appeal has been filed by the respondents aggrieved by the findings of the Tribunal under the impugned Award. The only question that arises for consideration is whether the appellants/claimants are entitled for enhancement of compensation.

4. The Tribunal under the impugned award assessed the notional monthly income of the deceased at Rs.8,000/-, which, in the considered view of this Court is low. If the avocation and year of the accident was taken into consideration, the Tribunal ought to have fixed the notional monthly income of the deceased at a higher sum. After giving due consideration to the year of the accident, which happened in the year 2014, this Court reassess the notional monthly income of the deceased at Rs.10,000/- instead of Rs.8,000/- erroneously fixed by the Tribunal. The Tribunal has rightly granted loss of future prospectus to the appellants/claimants at 40%. Since the deceased was aged 36 years at the time of the accident, the multiplier of 15 adopted by the Tribunal is also correct. The Tribunal has rightly deducted 1/4 towards personal expenses of the deceased since the appellants/claimants who are dependents of the deceased Subramaniam are five in number. Since the notional monthly income of the deceased has been enhanced to Rs.10,000/- the loss of dependency has been reassessed by this Court at Rs.18,90,000/- instead of Rs.15,50,000/- erroneously awarded by the Tribunal.

5. Further, the Tribunal has failed to award any compensation to the appellants/claimants towards loss of love and affection, which they are legally entitled to in accordance with the settled law, therefore, this Court awards a total sum of Rs.1,60,000/- i.e., @ Rs.40,000/- each to the parents and two minor children. The Tribunal has rightly awarded compensation of Rs.40,000/- towards loss of consortium to the first appellant, who is the wife of the deceased and the same is confirmed by this Court. The Tribunal has also rightly awarded a sum of Rs.15,000/- each towards loss of estate and funeral expenses, which is also confirmed by this Court as it is in accordance with the settled law.

6. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned Award is enhanced to Rs.21,20,000/- instead of Rs.15,82,000/- awarded by the Tribunal. In so far as the contributory negligence fixed on the deceased at 20% is concerned, the same is confirmed by this Court in view of the fact that admittedly the deceased was overtaking the insured lorry. The details of the compensation now awarded by this Court is detailed hereunder:

Sl No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or set aside or granted or reduced (Rs.)
1.	Loss of dependency	15,12,000	18,90,000	Enhanced
2.	Loss of consortium	40,000	40,000	Confirmed
3.	Loss of Estate	15,000	15,000	Confirmed
4.	Funeral Expenses	15,000	15,000	Confirmed
5.	Love and Affection	---	1,60,000	Awarded
	Total	15,82,000	21,20,000	
	Less: 20 % Contributory Negligence	12,65,600	16,96,000	Enhanced by Rs.4,30,400

7. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.12,65,600/- awarded by the Tribunal is hereby enhanced to Rs.16,96,000/- together with

interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The second respondent / insurance company is directed to deposit the enhanced 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.452 of 2014, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Tiruchengode. On such deposit, the appellants 1 to 3 /claimants 1 to 3 are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. So far as the amount awarded to the appellants 4 & 5 / claimants 4 & 5 are concerned, the amount should be deposited in a fixed deposit in a nationalised bank initially for a period of three years and the first appellant/first claimant is permitted to withdraw the accrued interest periodically. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Subordinate Judge, Tiruchengode.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.J.Chandren, Advocate, S.R.No.47929

C.M.A.No.1375 of 2020

NRL(CO)
PM/23/11/2021