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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3421 of 2019

1.A.Nagavalli

2.M.Ambirajan

.. Appellants/Petitioner

Vs.

1.S.Chellapandi

2.The Oriental Insurance Company Limited,
Divisional Office, Parimalam Complex,
Mettur Road, Erode - 638 009.

. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.11.2017 made in M.C.O.P.No.63 of 2016 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.

For Appellants :	Mr.R.Nalliyappan
For R1 :	No appearance
For R2 :	Mr.K.Vinod for Ms.Elveera Ravindran

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 02.11.2017 made in M.C.O.P.No.63 of 2016 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.

3.The appellants are the claimants in M.C.O.P.No.63 of 2016 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam. They filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of their son viz., A.Muthumani, who died in the accident that took place on 13.09.2015.



4.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 auto belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.8,76,000/- as compensation to the appellants at the first instance and recover the same from the 1st respondent.

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

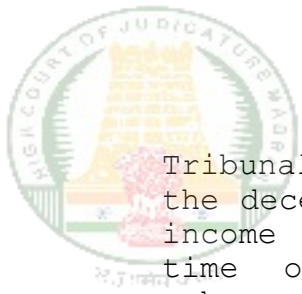
6.The learned counsel appearing for the appellants contended that the deceased was a student aged 17 years at the time of accident. But the Tribunal has fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased and failed to grant any enhancement towards future prospects of the deceased. The deceased was aged 17 years at the time of accident and the correct multiplier applicable is '18', whereas the Tribunal has applied multiplier '14' taking into consideration the age of the mother of the deceased. The Tribunal has not awarded any amount towards loss of estate and mental agony. The total compensation awarded by the Tribunal at Rs.8,76,000/- is meagre and prayed for enhancement of compensation.

7.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the deceased was a student aged 17 years, a non-earning member at the time of accident. In the absence of any material evidence with regard to avocation and income, the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the deceased and the same is excessive. The total compensation awarded by the Tribunal at Rs.8,76,000/- is not meagre and the appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

9.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

10.From the materials available on record it is seen that it is the contention of the appellants that the deceased was a student aged 17 years at the time of accident. The Tribunal considering the age of the deceased, fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident occurred in the year 2015 and the monthly income fixed by the

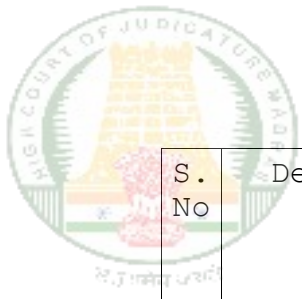


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Tribunal is meagre. Considering the year of accident and age of the deceased, a sum of Rs.9,000/- per month is fixed as notional income of the deceased. The deceased was aged 17 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects of the deceased. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellants are entitled to 40% enhancement towards future prospects. The Tribunal has adopted multiplier '14' taking into consideration the age of the mother of the deceased and the same is not correct. As per the judgment of the Hon'ble Apex Court referred to above, the age of the deceased is the basis for fixing multiplier and the correct multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], is '18'. The deceased was a bachelor at the time of accident and the Tribunal erroneously deducted 1/3rd towards personal expenses of the deceased instead of deducting 50% towards personal expenses. In view of the above, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.13,60,800/- {Rs.12,600/- [(Rs.9,000/- + Rs.3,600/- (40% of Rs.9,000/-)) x 12 x 18 x ½]}. The Tribunal has awarded a sum of Rs.1,00,000/- to 1st appellant and Rs.75,000/- to 2nd appellant towards loss of love and affection and the same are excessive. The appellants are entitled to a sum of Rs.40,000/- each towards loss of love and affection. The amount awarded by the Tribunal towards funeral expenses is excessive and the same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amount awarded by the Tribunal towards transportation is just and reasonable and hence, the same is hereby confirmed.

11.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has 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	6,72,000/-	13,60,800/-	Enhanced
2.	Loss of love and affection to 1 st appellant	1,00,000/-	40,000/-	Reduced



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
3.	Loss of love and affection to 2 nd appellant	75,000/-	40,000/-	Reduced
4.	Funeral expenses	25,000/-	15,000/-	Reduced
5.	Transportation	4,000/-	4,000/-	Confirmed
6.	Loss of estate	-	15,000/-	Granted
	Total	Rs.8,76,000/-	Rs.14,74,800/-	Enhanced by Rs.5,98,800/-

12. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.8,76,000/- is hereby enhanced to Rs.14,74,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the necessary Court fee for the enhanced amount of compensation. 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.63 of 2016 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam, at the first instance and recover the same from the 1st respondent-owner of the auto. 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. It is made clear that the appellants are not entitled to any interest for Rs.5,98,800/- the amount now enhanced by this Court, as per the order of this Court dated 06.09.2019 made in C.M.P.No.12430 of 2019 in C.M.A.No.SR.70535 of 2019. No costs.

Sd/-

Deputy Registrar (R)

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Sub Assistant Registrar

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To

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

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

+lcc to Mr.S.Elveera Ravindran, Advocate, S.R.No.3621

C.M.A.No.3421 of 2019

VG-II (CO)
PM(27/10/2021)