



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1435 OF 2014

1.Ammasai

2.P.Arumugam

.. Appellants

Vs.

1. P.Ganesa Raja

2. The United India Insurance Company Limited,
having office at Amman Complex,
S.K.S. Complex,
Opp to SBI Main Branch, Sathyamangalam,
Erode District - 638 402.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.11.2013 made in M.C.O.P.No.146 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.

For Appellants : Mr.V.P.Karthikeyan

For R1 : No appearance

For R2 : Mrs.I.Malar

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 06.11.2013 made in M.C.O.P.No.146 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.



2.The appellants are the claimants in M.C.O.P.No.146 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of their son viz., Senthil Kumar, who died in the accident that took place on 22.03.2012.

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 belonging to the 1st respondent and directed the respondents 1 & 2 to jointly and severally pay a sum of Rs.1,85,000/- 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 the Tribunal erroneously awarded meagre sum of Rs.1,85,000/- as compensation for the death of the minor 8 year old school going boy. The Tribunal ought to have fixed the annual income of the deceased at Rs.20,000/- instead of Rs.10,000/- and granted compensation towards loss of dependency. The Tribunal ought to have awarded a sum of Rs.1,50,000/- towards loss of love and affection instead of awarding a meagre sum of Rs.20,000/- towards loss of love and affection. The Tribunal failed to award any compensation towards loss of expectation of life and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal following the judgment of the Hon'ble Apex Court reported in 2009 (1) TNMAC 593 (SC) [R.K.Malik and another Vs. Kiran Pal and other] fixed a sum of Rs.10,000/- per annum and the same is proper. The total compensation awarded by the Tribunal at Rs.1,85,000/- is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.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.

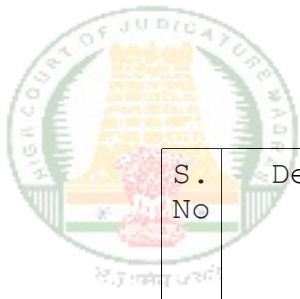
8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent - Insurance Company and perused the entire materials available on record.



9. From the materials available on record, it is seen that it is the contention of the appellants that the deceased was a minor School student aged 8 years, who died due to the injuries sustained by him in the accident that occurred on 22.03.2012. The Tribunal fixed a meagre sum of Rs.10,000/- per annum as notional income of the deceased, applied multiplier '15' and awarded a sum of Rs.1,50,000/- as compensation towards loss of dependency. The Hon'ble Apex Court in the judgment reported in 2013 (2) TNMAC 358 (SC), [Kishan Gopal & another Vs. Lala & others], considering the passage of time from the date of incorporating II Schedule and rise in cost of living, fixed notional income of the minor at Rs.30,000/- per annum. In the present case, the accident is of the year 2012. Following the judgment of the Hon'ble Apex Court reported in 2013 (2) TNMAC 358 (SC), cited supra, the annual income of the minor deceased is fixed at Rs.30,000/-. The deceased was aged 8 years at the time of accident and the multiplier '15' applied by the Tribunal is correct as per II Schedule. Thus, by fixing annual income at Rs.30,000/-, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.4,50,000/- [Rs.30,000/- X 15]. The appellants being the parents of the deceased have lost their son at young age. Hence, a sum of Rs.10,000/- each awarded by the Tribunal towards loss of love and affection to the appellants is meagre and hence, the same is enhanced to Rs.40,000/- each. The amounts awarded by the Tribunal towards loss of estate and funeral expenses are meagre and hence, the same are enhanced to Rs.15,000/- each.

10. 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	1,50,000/-	4,50,000/-	Enhanced
2.	Loss of love and affection	20,000/-	80,000/-	Enhanced
3.	Funeral expenses	5,000/-	15,000/-	Enhanced



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
4.	Loss of estate	10,000/-	15,000/-	Enhanced
	Total	Rs.1,85,000/-	Rs.5,60,000/-	Enhanced by Rs.3,75,000/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,85,000/- is hereby enhanced to Rs.5,60,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 & 2 are jointly and severally 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.146 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam. 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. The appellants are directed to pay the necessary Court fee for the enhanced amount of compensation. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

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.

C.M.A.No.1435 of 2014

SVI(CO)
RLP(01/04/2022)