



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2021

WEB COPY

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2132 of 2014

1.Shanthi
2.Minor Kaviya
3.Minor Ranjith .. Appellants /Claimants
(Minors represented by their mother
and next friend 1st appellant)

Vs.

1.Narayanan

2.Reliance General Insurance Co. Ltd.
2nd floor, LMR Complex
Salem Road, Namakkal.

3.Saravanan
(Given up)

4.Reliance General Insurance Co. Ltd.
2nd floor, Sony World Building
Haritha Towers, 965, Avinashi road
Lakshmi Mills, Coimbatore.
(Given up)

.. Respondents/Respondents

(The respondents 1, 3 and 4 were set exparte
before the Tribunal, hence, notice to them are
dispensed with)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of
the Motor Vehicles Act, 1988, against the judgment and decree
dated 28.10.2013 made in M.C.O.P.No.452 of 2012 on the file of
Motor Accident Claims Tribunal, Principal District Court,
Namakkal.

For Appellants	:	Mr.C.Kulanthaivel
For R2 and R4	:	Mr.S.Arunkumar
For R1 and R3	:	No appearance



J U D G M E N T

(The matter is heard through 'Video-conferencing/Hybrid mode')

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 28.10.2013 made in M.C.O.P.No.452 of 2012 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellants are claimants in M.C.O.P.No.452 of 2012 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal. They filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one Meenakshi Sundaram, who died in the accident that took place on 04.02.2012.

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 Maruthi Alto car belonging to the 1st respondent and directed the 1st respondent as well as the 2nd respondent being insurer of the said car to pay jointly and severally a sum of Rs.6,45,000/- as compensation to the appellants and dismissed the claim petition as against the respondents 3 and 4, who are owner and insurer of Multi Axle lorry respectively.

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 deceased was working as a driver of Multi Axle lorry at the time of accident and was earning a sum of Rs.25,000/- per month including batta. To prove the same, the appellants have examined the Manager of the Transport Company in which the deceased was working, as P.W.3 and marked driving license and salary certificate of the deceased as Exs.P10 and P15 respectively. The Tribunal without considering the same, fixed only a meagre sum of Rs.5,000/- per month as notional income of the deceased. The amounts awarded by the Tribunal towards loss of consortium, loss of love and affection and funeral expenses are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the respondents 2 and 4 contended that the appellants have not produced any valid material evidence to prove that the deceased was earning salary and batta to the tune of Rs.25,000/- per

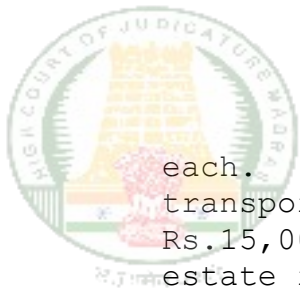


month. Therefore, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the deceased, which is just and reasonable. The total compensation awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Though notice has been served on the respondents 1 and 3 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

8. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondents 2 and 4 and perused the entire materials available on record.

9. It is the contention of the appellants that the deceased was working as a Multi Axle lorry driver at the time of accident and was earning a sum of Rs.25,000/- per month including batta. To prove their contention, they have examined one M.Viswanathan, Manager of Saravana Transport Company, in which the deceased was working as driver, as P.W.3 and marked the driving license and salary certificate of the deceased as Exs.P10 and P15 respectively. P.W.3 in his evidence has deposed that in the Transport Company, 120 lorries are running and 200 persons are employed. The Tribunal did not accept the salary certificate as appellants failed to produce the documents like attendance register, wage register etc. to show that the deceased was paid a sum of Rs.15,000/- per month as salary and Rs.8,000/- to Rs.10,000/- as batta. The accident is of the year 2012. Taking into consideration the date of accident and the avocation of the deceased as heavy vehicle driver, a sum of Rs.11,000/- per month is fixed as notional income of the deceased. The Tribunal did not grant any enhancement towards future prospects. As per Ex.P11/post-mortem certificate, the deceased was aged 38 years at the time of accident. The appellants are entitled to 40% enhancement towards future prospects. The Tribunal applied multiplier '15' and deducted $1/3^{\text{rd}}$ towards personal expenses, which are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.18,48,000/- (Rs.11,000/- + 4400 [Rs.11,000/- X 40%] X 12 X 15 X $2/3$). The sum of Rs.10,000/- and Rs.5,000/- awarded by the Tribunal towards loss of consortium and funeral expenses are meagre and hence, the same are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. The appellants 2 and 3 are minor children, who lost their father at their tender age. Hence, a sum of Rs.15,000/- each awarded by the Tribunal towards loss of love and affection is hereby enhanced to Rs.40,000/-



each. The Tribunal has not awarded any amounts towards transportation and loss of estate. Hence, Rs.10,000/- and Rs.15,000/- are awarded towards transportation and loss of estate respectively.

WEB COPY

10. 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 or reduced
1.	Loss of dependency	6,00,120	18,48,000	Enhanced
2.	Loss of love and affection	30,000	80,000	Enhanced
3.	Loss of consortium	10,000	40,000	Enhanced
4.	Funeral expenses	5,000	15,000	Enhanced
5.	Transportation	-	10,000	Granted
6.	Loss of estate	-	15,000	Granted
	Total	6,45,120 rounded off to 6,45,000	20,08,000	Enhanced by Rs.13,63,000 /-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.6,45,000/- is hereby enhanced to Rs.20,08,000/- 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 necessary Court fee, if any, on the enhanced compensation. The respondents 1 and 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 eight weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st appellant is permitted to withdraw her respective share of the award amount now determined by this Court as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less



the amount if any, already withdrawn. The share of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st appellant, mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. This appeal is dismissed as against the respondents 3 and 4. No costs.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

kj

To

1.The Principal District Judge
(Motor Accident Claims Tribunal)
Namakkal.

2.The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mr.C.Kulanthaivel, Advocate SR.No.65877

C.M.A.No.2132 of 2014

RSV(CO)
GN(07/02/2022)