

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2021

CORAM

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

CIVIL MISCELLANEOUS APPEAL NO. 2644 OF 2014

1.S.Dhanalakshmi

2.Minor S.Saranraj

3.Minor S.Saranya, minor petitioners are
represented by their Mother and Next Friend Mrs.Dhanalakshmi

4.M.Perumal

5.P.Rani .. Appellants/petitioners

Versus

1.E.Mohan

2.M/s.Iffko-Tokyo General Insurance Company Limited,
No.28, (Old No.195) 1st and 2nd Floor,
North Usman Road, T.Nagar, Chennai-17.

.. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 15.06.2012 made in M.C.O.P. No. 4210 of 2007 on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai.

For Appellant : T.G.Balachandran

For R2 : Mr.N.Vijaya Raghavan

For R1 : Set Exparte

JUDGMENT

This civil miscellaneous appeal has been filed by the appellants/claimants for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Small Causes Court, Chennai, in M.C.O.P.No.4210 of 2007 dated 15.06.2012.

2. As per the averments in the claim petition filed before the Tribunal, on 14.10.2007 at about 15.30 hrs while the deceased was proceeding in the motor cycle bearing registration number TN 20 AB 4086 from 2nd street, Nesamani Nagar, Perumbakkam towards Nesamani Nagar Main Road Junction, a tipper lorry bearing registration number TN 05 C 8826 came in a rash and negligent manner in a reverse direction to the Nesamani Nagar 2nd Street and hit the deceased which led to the death of the deceased. The claimants are the wife, minor children of the deceased and parents of the deceased. The claimants claimed a sum of Rs.15,00,000/- towards the compensation for the death of the deceased/P.Shanmugam.

3. Before the Tribunal, the first respondent remained ex-parte and the 2nd respondent insurance company filed counter by denying the manner of accident as alleged in the claim petition. The Insurance Company resisted the claim petition by stating that the deceased failed to observe traffic on the road and tried to cross the junction and in that process the deceased dashed against the said lorry and the deceased was solely responsible for the said accident. Even though the insurance company is the insurer of the offending vehicle, contributory negligence is there on the part of the deceased. The Insurance Company also disputed the age and occupation of the deceased and also the amount of compensation claimed under various heads.

4. In order to prove the claim, on the side of claimants, the first claimant was examined as P.W.1, one Mr.E.Parthasarathy, was examined as P.W.2 and 7 documents were marked viz., Ex.P.1 to P.7. On the side of the second respondent, one Mr.Sanjay Kumar was examined as R.W.1 and three documents were marked viz., Ex.R1 to R3.

5. The Tribunal after analysing the entire evidence available on record came to the conclusion that the accident was occurred due to the rash and negligent driving of the driver of the Tripper Lorry belongs to the first respondent and insured with the second respondent and passed an award for a sum of Rs.7,68,500/- under the various heads.

6. Not being satisfied with the award passed by the Tribunal, the present appeal has been filed by the claimants for enhancement of compensation.

7. The learned counsel for the appellant would submit that

the Tribunal has fixed only Rs.4,500/- per month for the deceased who was working as mason and the same requires interference of this court. He further submitted that award amount towards love and affection, loss of expectation of life are also meagre and the same needs enhancement.

8. The learned counsel for the 2nd respondent would submit that award amount passed by the Tribunal is perfectly in order and the same may be confirmed.

9. Heard the counsel for both sides and perused the materials placed on record. The Tribunal, on appreciation of the oral and documentary evidence, awarded compensation under various heads as under.

Sl.No	Head under which the amount is awarded	Amount awarded by the Tribunal(in Rs.)
1	Pecuniary loss	Rs.6,88,500/-
2	Loss of Consortium	Rs. 20,000/-
3	Loss of Love and affection	Rs. 40,000/-
4	Funeral Expenses	Rs. 10,000/-
5	Loss of Expectation of Life	Rs. 10,000/-
	Total	Rs.7,68,500/-

10. Admittedly the accident was of the year 2007 and the deceased as a mason would have definitely earned a sum of Rs.6,500/- per month. Hence, this Court is inclined to take the monthly income as Rs.6,500/-. If Rs.6,500/- is taken as the monthly income, the annual income would be arrived at Rs.78,000/-. As the claimant was aged about 28 years at the time of accident, 40% of the amount has to be added towards future prospects. In such case, the annual income of the deceased will scale up to (Rs.9,100 x 12=1,09,200/-). Since the deceased was aged 28 years at the time of accident, the correct multiplier is "17" and in which, 1/4th is to be deducted since there are five claimants. Accordingly the loss of income comes to Rs.18,56,400/- out of which, if 1/4th is deducted, the total pecuniary loss comes to Rs.13,92,300/-.

11. The Tribunal towards loss of consortium has awarded Rs.20,000/- and Rs.40,000/- towards loss of love and affection. As per the decision in the case of National Insurance Company Limited vs. Pranay Sethi and others reported in (2017) 16 Supreme Court Cases 680, Rs.40,000/- has to be awarded towards loss of consortium and loss of love and affection. Hence, an amount of Rs.40,000/- is awarded under the head of loss of consortium and Rs.1,60,000/- is awarded under the head of loss of love and affection i.e., Rs.40,000/- each for the respondents

2 to 5/claimants. The Tribunal has not awarded any compensation towards transportation and this Court is inclined to award Rs.10,000/- towards transportation. This Court is also inclined to award Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of expectation of life instead of Rs.10,000/- each awarded by the Tribunal. Accordingly, this Civil Miscellaneous Appeal is Allowed. No costs. The compensation awarded by the Tribunal is modified as follows:

Sl. No	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)	Award confirmed or enhanced or granted
1	Pecuniary loss	Rs.6,88,500/-	Rs.13,92,300/-	Enhanced
2	Loss of Consortium	Rs. 20,000/-	Rs. 40,000/-	enhanced
3	Loss of Love and affection	Rs. 40,000/-	Rs. 1,60,000/-	enhanced
4	Transportation	-	Rs. 10,000/-	Now granted
5	Funeral Expenses	Rs. 10,000/-	Rs. 15,000/-	enhanced
6	Loss of Expectation of Life	Rs. 10,000/-	Rs. 15,000/-	enhanced
	Total	Rs.7,68,500/-	Rs.16,32,300/-	Enhanced to Rs.8,63,800/-

12. In the result, this Civil Miscellaneous Appeal is Allowed and the compensation awarded by the Tribunal at Rs.7,68,500/- is hereby enhanced to a sum of Rs.16,32,300/- with interest and costs. The second respondent/Insurance Company is directed to deposit the enhanced award amount, 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 order. On such deposit, the first appellant is entitled to a sum of Rs.8,16,150/- as compensation being the wife of the deceased; the appellants 2 and 3 are entitled to a sum of Rs.2,44,845/- each, being the children of the deceased and the fourth and fifth appellant are entitled to a sum of Rs.1,63,230/- each as

compensation, being the father and mother of the deceased. On such deposit, the appellants one, fourth and fifth/claimants are permitted to withdraw their respective share amount, with interest and costs. The share of the minor appellants 2 and 3 are directed to deposit in any one of the nationalized bank as fixed deposit, till they attain majority. The first appellant/claimant, being the mother of the minor appellants 2 and 3, is permitted to withdraw the interest amount once in every three months for the welfare of the minor appellants/claimants 2 and 3, till they attain majority. The appellants/claimants shall pay the necessary Court fee, if any for the enhanced award amount. No costs.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

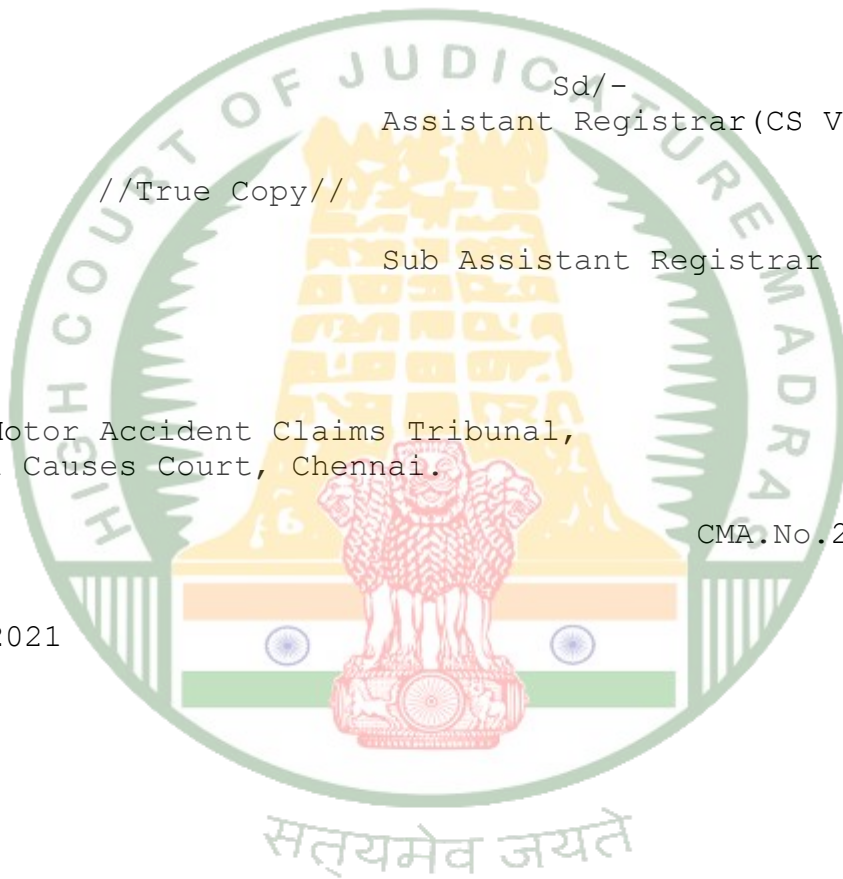
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To

1. The Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

CMA.No.2644 of 2014

VBM(CO)
CS/28/06/2021



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