



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.366 of 2014

1.P.Geetha

2.P.Deenipriya @ P.Dhanusha

3.P.Mohaneesh @ P.Monish

Vendamma (died)

V.Mannar (died)

...Appellants

Vs.

1.K.Balaiah Naidu

(R1 was set exparte in the Trial Court.
Hence, notice to R1 dispensed with)

2.United India Insurance Company Limited,
Third Party Hubb, Sillingi Building, 4th Floor,
No.134, Greams Road,
Chennai - 600 006.

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.09.2013 made in M.C.O.P.No.2706 of 2009 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I , (Special Subordinate Judge-I) dealing with M.C.O.P. Cases, Chennai.

For Appellants	:	Mr.K.Suryanarayanan
For R1	:	Exparte
For R2	:	Mrs.R.Rathnathara

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 05.09.2013 made in M.C.O.P.No.2706 of 2009 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I dealing with M.C.O.P. Cases, Chennai.



2.The appellants are the claimants in M.C.O.P.No.2706 of 2009 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I dealing with M.C.O.P. Cases, Chennai. They filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one V.Padmanabhan, who died in the accident that took place on 06.03.2009.

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 bus belonging to 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.13,34,000/- 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 deceased was working as Assistant in Life Insurance Corporation of India, Puttur and was earning a sum of Rs.12,000/- per month. But, the Tribunal without any basis, fixed the income of the deceased at Rs.7,811/- per month and the same is meagre. The Tribunal ought to have fixed the monthly income of the deceased as per Ex.P9 / Salary Certificate & Ex.P10 / Salary Pay slips for the month of January & February 2009. The deceased was aged 35 years at the time of accident and the Tribunal ought to have granted 50% enhancement towards future prospects. The amounts awarded by the Tribunal under conventional heads are meagre and prayed for enhancement of compensation.

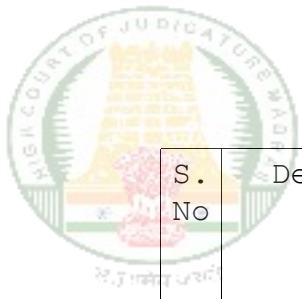
6.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering entire materials on record, has fixed a sum of Rs.7,811/- as monthly income of the deceased and the same is not meagre. The amounts awarded by the Tribunal towards loss of consortium and loss of love and affection are excessive and hence, the appellants are not entitled to any enhancement towards future prospects. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.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.



8.It is the case of the appellants that at the time of accident the deceased was working as Assistant in Life Insurance Corporation of India, Puttur and was earning a sum of Rs.12,000/- per month. To substantiate their case, they produced the salary certificate and marked the same as Ex.P9. From Ex.P9, it is seen that the salary of the deceased was Rs.11,302/- per month. The 2nd respondent/Insurance Company has not disproved Ex.P9/salary certificate. It is not the case of the 2nd respondent - Insurance Company that the deceased was not working in LIC. The Tribunal without properly appreciating Ex.P9 and without giving any valid reason, fixed monthly income of the deceased at Rs.7,811/- and Rs.9,000/- including future prospects. The Tribunal has committed an error in fixing the monthly income of the deceased at Rs.7,811/- and Rs.9,000/- including future prospects. Therefore, the monthly income fixed by the Tribunal is meagre. Considering Ex.P9 / salary certificate produced by the appellants, the income of the deceased is fixed at Rs.11,300/- per month. As per Ex.P8 / Identity Card, the deceased was aged 34 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. 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 50% enhancement towards future prospects. 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 '16', but the Tribunal wrongly applied multiplier '17'. There are three dependants of the deceased and the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased. Thus, by fixing a sum of Rs.11,300/- as monthly income, granting 50% enhancement towards future prospects and applying multiplier '16', the compensation awarded by the Tribunal towards pecuniary loss is modified to Rs.21,69,600/- {Rs.16,950/- [Rs.11,300/- + Rs.5,650/- (50% of Rs.11,300/-)] X 12 X 16 X 2/3}. The Tribunal has not awarded any amount towards loss of estate. In view of the same, the amounts awarded by the Tribunal under conventional heads are not interfered with.

9.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.	Pecuniary loss	12,24,000/-	21,69,600/-	Enhanced
2.	Loss of consortium to 1 st appellant	50,000/-	50,000/-	Confirmed
3.	Loss of love and affection	50,000/-	50,000/-	Confirmed
4.	Funeral expenses	10,000/-	10,000/-	Confirmed
	Total	Rs.13,34,000/-	Rs.22,79,600/-	Enhanced by Rs.9,45,600/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.13,34,000/- is hereby enhanced to Rs.22,79,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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.2706 of 2009 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I dealing with M.C.O.P. Cases, Chennai. On such deposit, the appellants 1 to 3 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

//True copy//

Sub Assistant Registrar

krk



To

1. The Special Subordinate Judge No.I,
(Dealing with M.C.O.P. Cases),
Motor Accident Claims Tribunal,
Chennai.

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

+1 CC to Mr.K.Suryanarayanan, Advocate sr 61644

+1 CC to Mrs.R.Rathnathara, Advocate sr 62150.

C.M.A.No.366 of 2014

GSM(CO)
SP(14/02/2022)