

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3186 OF 2019

1.Chandran

2.Santhiya

3.Minor. Karthick .. Appellants/Petitioners

(Minor 3rd appellant represented by his
father Chandran, 1st appellant herein)

Vs.

1. A.Baskar

2. United India Insurance Company Limited,
Represented by its Manager, Division Officer,
1171, Muthaiah Complex,
Erode. .. Respondents/Respondents

(Notice to R1 dispensed with for the time
being and separate petition is filed)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.04.2019 made in M.C.O.P.No.805 of 2015 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani, Erode District.

For Appellants : Ms.T.Gayathri
for Mr.C.Kulanthaivel

For R2 : Ms.I.Malar

For R1 : Dispensed with vide petition
Sr.No.102654

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 30.04.2019 made in M.C.O.P.No.805 of 2015 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani, Erode District.

3.The appellants are the claimants in M.C.O.P.No.805 of 2015 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani, Erode District. They filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Vijayalakshmi, who died in the accident that took place on 11.09.2015.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.11,68,000/- 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 at the time of accident, the deceased was a Tailor, aged 38 years and was earning a sum of Rs.10,000/- per month. To prove the avocation and income, the appellants examined the Member of the Tamil Nadu Sewing Labour Welfare Board as P.W.3 and marked Exs.X1 & X2. The Tribunal after considering the evidence of P.W.3 and Exs.X1 & X2, fixed a meagre sum of Rs.8,000/- per month as notional income of the deceased. There are three dependants of the deceased and the Tribunal erroneously deducted 50% towards personal expenses of the deceased instead of deducting 1/3rd. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal after considering the evidence of P.W.3 and Exs.X1 & X2, has rightly fixed a sum of Rs.8,000/- as monthly income of the deceased. The appellants 2 and 3 are the dependants of the deceased and the 1st appellant is not depending on the income of the deceased. Hence, deduction of 50% made by the Tribunal is proper and the amounts

awarded by the Tribunal under different heads are not meagre. The Tribunal considering the entire materials on record, awarded a sum of Rs.11,68,000/- as compensation to the appellants which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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 on record.

9. From the materials available on record, it is seen that it is the contention of the appellants that at the time of accident, the deceased was a Tailor, aged 38 years and was earning a sum of Rs.10,000/- per month. To prove the avocation and income, the appellants examined one Gomathi, who is the Member of the Tamil Nadu Sewing Labour Welfare Board as P.W.3 and marked two documents as Exs.X1 & X2. The Tribunal considering the evidence of P.W.3 and Exs.X1 & X2, fixed a sum of Rs.8,000/- as monthly income of the deceased. The accident occurred in the year 2015 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident, age and nature of work done by the deceased, a sum of Rs.9,000/- per month is fixed as notional income of the deceased. Following the judgments of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others] and 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], the Tribunal has granted 40% enhancement towards future prospects of the deceased and applied multiplier '15' and the same are proper. There are three dependants of the deceased and the Tribunal erroneously deducted 50% towards personal expenses of the deceased instead of deducting 1/3rd. Thus, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.15,12,000/- {Rs.12,600/- [(Rs.9,000/- + Rs.3,600/- (40% of Rs.9,000/-)) x 12 x 15 x 2/3]}. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

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	10,08,000/-	15,12,000/-	Enhanced
2.	Loss of love and affection to appellants 2 & 3	80,000/-	80,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
5.	Transportation	10,000/-	10,000/-	Confirmed
6.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	Rs.11,68,000/-	Rs.16,72,000/-	Enhanced by Rs.5,04,000/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.11,68,000/- is hereby enhanced to Rs.16,72,000/- 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.805 of 2015 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani, Erode District, at the first instance and recover the same from the 1st respondent. On such deposit, the appellants 1 and 2 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 share of the minor 3rd appellant is directed to be deposited in any one of the Nationalized Banks, till the

minor 3rd appellant attains majority. On such deposit, the 1st appellant, being the father of the minor 3rd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor 3rd appellant. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

krk

To

1. The IV Additional District Judge,
Motor Accident Claims Tribunal,
Bhavani, Erode District.

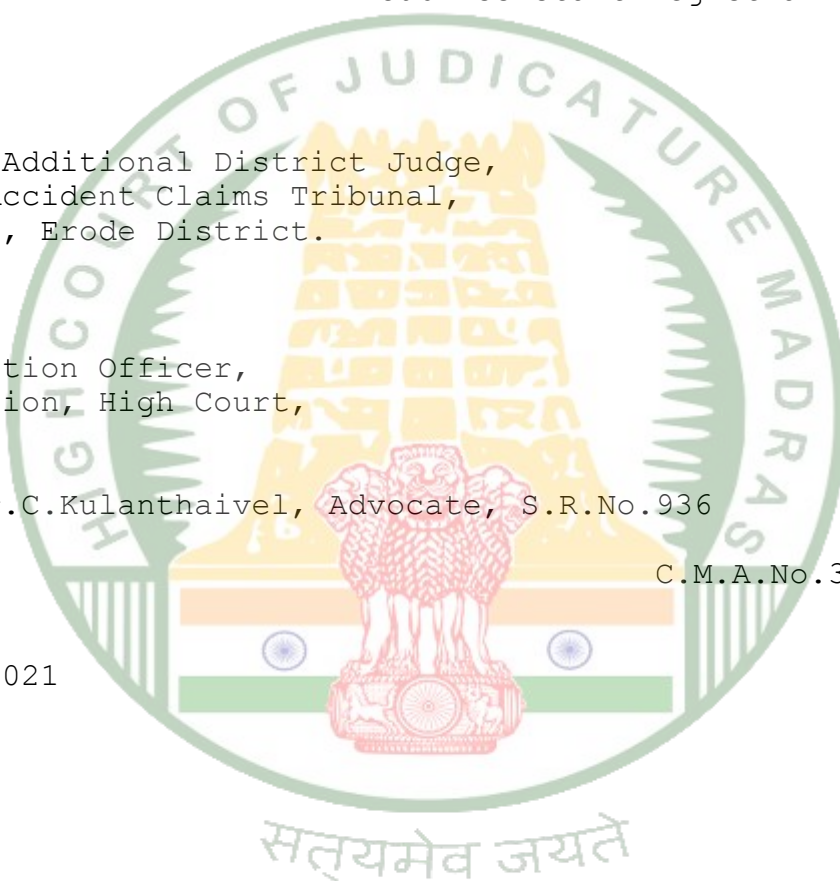
Copy To

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

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.936

C.M.A.No.3186 of 2019

VBA (CO)
CS/12/02/2021



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