



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1034 of 2017

and

C.M.P.No.5102 of 2017

[video conferencing]

1.Manila

2.Minor Kuppan

3.Minor Venkatesan

4.Minor Snekha

(Minor Appellants 2 to 4 are represented by their guardian /mother, 1st Appellant Manila)

5.Ramesh

6.Rekha

...Appellants/Petitioners

Vs.

1.Ramesh

2.The Divisional Manger,

The New India Assurance Co. Ltd.,
Having Office at No.42, Big Street,
Thiruvannamalai.

3.Sabjohn

4.Bashibai

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.03.2013 made in M.A.T.C.O.P.No.225 of 2008, on the file of the Motor Accidents Claims Tribunal, District Court, Thiruvannamalai.

For Appellants : Mrs.A.Subadra
For M/s.M.Malar

For R1 : Not ready in notice



For R2 : Mr.M.Krishnamoorthy
For R3 & R4 : Mr.E.S.Jose Francis

JUDGMENT

WEB COPY

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award passed in M.A.T.C.O.P.No.225 of 2008 dated 28.03.2013 on the file of the Motor Accident Claims Tribunal, District Court, Thiruvannamalai.

2.The appellants are the claimants in M.A.T.C.O.P.No.225 of 2008, on the file of the Motor Accidents Claims Tribunal, District Court, Thiruvannamalai. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Rajendiran, who died in the accident that took place on 06.07.2007.

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 1st respondent and directed the respondents 1 & 2 to pay a sum of Rs.7,03,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present Civil Miscellaneous Appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased aged 35 years, was selling needles and small black beads and was earning a sum of Rs.8,000/- per month. But, the Tribunal, without giving valid reason fixed a sum of Rs.4,500/- per month as notional income of the deceased which is meagre. There are six dependants of the deceased and the Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased instead of deducting 1/4th. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

6.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants failed to prove the avocation and income of the deceased by producing valid document. In the absence of any material evidence with regard to avocation and income, a sum of Rs.4,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal considering the entire materials on record, has awarded a sum of Rs.7,03,000/- as



compensation to the appellants, which itself is excessive. Hence, the appellants are not entitled for any enhancement 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 respondents and perused the entire materials placed on record.

8. It is the case of the appellants that at the time of accident, the deceased was aged 35 years and selling needles and small black beads and was earning a sum of Rs.8,000/- per month. The appellants have not proved the avocation and income of the deceased by producing valid document. In the absence of any valid document with regard to avocation and income, the Tribunal considering the age and nature of work fixed a sum of Rs.4,500/- per month as notional income of the deceased which is not meagre. The Tribunal has not awarded any compensation towards future prospects. The multiplier '17' applied by the Tribunal is correct as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TN MAC 1 SC, [Sarla Verma & others Vs. Delhi Transport Corporation & another]. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellants are entitled to future prospects at 40%. There are six dependants of the deceased and the Tribunal erroneously deducted $1/3^{\text{rd}}$ towards personal expenses of the deceased instead of deducting $1/4^{\text{th}}$. Thus, by fixing Rs.4,500/- per month as notional income of the deceased, granting 40% enhancement towards future prospects and deducting $1/4^{\text{th}}$ towards personal expenses, the compensation awarded by the Tribunal towards loss of income is modified to Rs.9,07,200/- {Rs.6,300/- [Rs.4,500/- + Rs.1,800/- (40% of Rs.4,500/-)] X 12 X 16 X $3/4$ }.

9. The Tribunal has awarded a meagre sum of Rs.10,000/- as loss of consortium to the 1st appellant, and the same is enhanced to Rs.20,000/-. The Tribunal has awarded only a sum of Rs.70,000/- towards loss of love and affection to appellants 2 to 5, who are the children of the deceased and the respondents 3 & 4 who are the parents of the deceased is very meagre. They are entitled to a sum of Rs.20,000/- each towards loss of love and affection. Thus a sum of Rs.1,40,000/- comes under the head of loss of love and affection to the appellants 2 to 5 and respondents 3 & 4. The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses including transport charges which is meagre and hence this Court awards a sum of Rs.10,000/- under the head of funeral expenses and also awards a sum of Rs.5,000/- under the head of transport charges. The amounts awarded by the



Tribunal towards damages to cloth and articles is just and reasonable and hence, the same is hereby confirmed.

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 earning capacity	Rs.6,12,000/-	Rs.9,07,200/-	Enhanced
2.	Loss of consortium	Rs.10,000/-	Rs.20,000/-	Enhanced
3.	Loss of love and affection	Rs.70,000/-	Rs.1,40,000/-	Enhanced
4.	Funeral Expenses and Transport Charges	Rs.10,000/-	Rs.15,000/-	Enhanced
5.	Damage to cloth and articles	Rs.1,000/-	Rs.1,000/-	Confirmed
	Total	Rs.7,03,000/-	Rs.10,83,200/- -	Enhanced to Rs.3,80,200/ -

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,03,200/- is hereby enhanced to Rs.10,83,200/- 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 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.A.T.C.O.P.No.225 of 2008, on the file of the Motor Accidents Claims Tribunal, Special District Court, Thiruvannamalai. On such deposit, the appellants 1, 5, 6 and respondents 3 & 4 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 2 to 4 appellants are directed to be deposited in any one of the Nationalized Banks, till the minor 2 to 4 appellants



attains majority. On such deposit, the 1st appellant, being the mother of the minor 2 to 4 appellants is permitted to withdraw the accrued interest once in three months for the welfare of the minor 2 to 4 appellants. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ssi
To:

1.The Motor Accidents Claims Tribunal,
District Judge,
Thiruvannamalai.

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

+1 CC to M/s.M. Malar, advocate sr 64770.

C.M.A.No.1034 of 2017

NMI (CO)
SP(07/02/2022)