

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4255 of 2019

1.Muniyammal  
2.Amul  
3.Regina  
4.Saravanan  
5.Rajesh

.. Appellants/Petitioners

Vs.

1.N.Sivakumar

2.The National Insurance Company Limited  
Third Party Cell  
No.45, Moore street  
Parrys, Chennai-1.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.02.2019 made in M.C.O.P.No.757 of 2016 on the file of Motor Accident Claims Tribunal, III Additional District Court, Tiruvallur at Poonamallee.

For Appellants : Mr.K.Varadha Kamaraj

For R2 : Mr.J.Michael Visuvasam

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 11.02.2019 made in M.C.O.P.No.757 of 2016 on the file of Motor Accident Claims Tribunal, III Additional District Court, Tiruvallur at Poonamallee.

2.The appellants are claimants in M.C.O.P.No.757 of 2016 on the file of Motor Accident Claims Tribunal, III Additional District Court, Tiruvallur at Poonamallee. They filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one D.Prakash, who died in the accident that took place on 20.10.2016.

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 Toyota land cruiser car belonging to the 1<sup>st</sup> respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.13,48,000/- as compensation to the appellants 1, 3 to 5 and has not granted any compensation to the 2<sup>nd</sup> appellant as her name was not mentioned in Ex.P4/legal heir certificate.

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 at the time of accident, the deceased was working as a sweeper in Tambaram Municipality and was earning a sum of Rs.15,000/- per month. The Tribunal without considering the same, erred in fixing a meagre sum of Rs.9,000/- per month as notional income of the deceased. The deceased was aged 50 years at the time of accident. The Tribunal failed to grant any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company contended that the appellants failed to produce any document to prove the avocation and income of the deceased. In the absence of any material to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the deceased, which is not meagre. 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.Heard through "Video-Conferencing" the learned counsel appearing for the appellants as well as the 2<sup>nd</sup> respondent/Insurance Company and perused the entire materials available on record.

8.It is the contention of the appellants that the deceased was working as a sweeper in Tambaram Municipality and was earning a sum of Rs.15,000/- per month at the time of accident. The appellants failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.9,000/- per month as notional income of the deceased, which is meagre. The accident is of the year 2016 and hence, a sum of Rs.14,000/- per month is fixed as notional income of the deceased. The deceased was aged 50 years at the time of accident

as per Ex.P2/Post-mortem certificate and Ex.P3/Death certificate. 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 v. Pranay Sethi), the appellants are entitled to 25% enhancement towards future prospects. The Tribunal applied multiplier '13' and deducted 1/4<sup>th</sup> towards personal expenses of the deceased, which are proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.20,47,500/- (Rs.14,000/- + 3500 [Rs.14,000/- X 25%] X 12 X 13 X 3/4). The Tribunal awarded a sum of Rs.2,25,000/- towards loss of love and affection, which is excessive and hence, the same is hereby reduced to Rs.40,000/-. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed.

9.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         | 10,53,000                       | 20,47,500                         | Enhanced                                          |
| 2.   | Loss of love and affection | 2,25,000                        | 40,000                            | Reduced                                           |
| 3.   | Loss of consortium         | 40,000                          | 40,000                            | Confirmed                                         |
| 4.   | Loss of estate             | 15,000                          | 15,000                            | Confirmed                                         |
| 5.   | Funeral expenses           | 15,000                          | 15,000                            | Confirmed                                         |
|      | Total                      | 13,48,000                       | 21,57,500                         | Enhanced by Rs.8,09,500/-                         |

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.13,48,000/- is hereby enhanced to Rs.21,57,500/- 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 the necessary court fee on the enhanced award amount. The 2<sup>nd</sup>

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. On such deposit, the appellants 1, 3 to 5 are permitted to withdraw their 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. No costs.

s/d-

Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

1.III Additional District Judge  
Motor Accident Claims Tribunal  
Tiruvallur at Poonamallee.

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

+1cc to Mr.K.Varadha Kamaraj, Advocate SR.6723

+1cc to Mr.Micheal Visuvasam, Advocate SR.6980

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RR(CO)  
CB(08/04/2021)

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