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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2021

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A.No. 2681 of 2017

1. E. Vedachalam (died)
2. V.Visalakchi
3. V. Vaishnavi
4. V. Nandagopal

(Appellants 2 to 4 brought on record as LR's of the
deceased Sole Appellant vide order of this Court
dated 26.08.2021)

...Appellants

Vs.

1. R. Venkatesan
2. United India Insurance Co. Ltd.,
Silingi Building, IV Floor,
No. 134, Greams Road,
Chennai - 600 006.
3. S. Raja
4. S. Ramesh
5. G. Ravichandran

....Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.02.2017 made in M.C.O.P.No. 4815 of 2011 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellants : Mr.A.A. Venkatesan

For Respondents : Mr. Bhaskaran for R2



J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 04.02.2017 made in M.C.O.P.No. 4815 of 2011 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

2.The deceased was the claimant in M.C.O.P.No. 4815 of 2011 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai. During the pendency of the Appeal, the Claimant died and therefore his Legal Heirs were impleaded as Appellants 2 to 4 in the Appeal.

3. The Claimant filed M.C.O.P.No. 4815 of 2011 before the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai claiming a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) for the injuries sustained by him in an accident that occurred on 13.06.2011.

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 alleged vehicle belonging to the 1st respondent and directed the 2nd Respondent-Insurance Company to pay a sum of Rs.3,98,600/- as compensation to the Claimant.

4.Not being satisfied with the amounts awarded by the Tribunal, the Claimant has come out with the present appeal seeking enhancement of compensation and during the pendency of this Appeal since the Claimant/First Appellant passed away, his Legal Heirs were brought on record vide order dated 26.08.2021.

5.The learned counsel appearing for the Appellants contended that the learned Tribunal failed to consider the disability certificates Ex.P20 and Ex.P22, issued by P.W.2 and P.W.3 @ 30% and 40% respectively and fixed the disability of the deceased claimant at 35% which is very low. He further submitted that the Claims Tribunal ought to have adopt multiplier method and award the compensation towards loss of income. He further submitted that the compensation awarded by the Tribunal towards other heads are also very low and the same needs to be enhanced.

6.Per contra, the learned counsel appearing for the 2nd Respondent/Insurance company contended that the Claims Tribunal erred in holding liability on the part of 2nd Respondent/Insurance Company for the reason that the 1st Respondent has already sold



the Tata Ace Van to the 3rd Respondent and thereafter, the 3rd Respondent has sold the same to the 5th Respondent. But none of the Respondents informed the insurance company about the name transfer and it is unknown that who is the actual owner of the Tata Ace van at the time of accident. Therefore, the 2nd respondent/Insurance company need not be liable to pay the compensation and the compensation awarded by the Tribunal to the Claimant is very high and the same needs to be reduced. 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. Insofar as the disability of the deceased is concerned, though P.W.2 and P.W.3-Doctors who examined the deceased on different dates with respect to fracture and midface injury have assessed the disability @30% and 40% respectively, during the cross examination, P.W.2 and P.W.3 admitted that they have not given the follow up treatment for the deceased. Therefore, based on the aforesaid statement, the Claims Tribunal has fixed the disability of the deceased @35% (20% + 15%) and awarded the compensation at Rs.1,05,000/-. Considering the grievous injuries sustained by the Claimant and the period of treatment undergone, this Court feels that 40% disability can be fixed. Hence, by fixing disability @ 40%, a sum of Rs.1,20,000/- (40 x 3000) is awarded towards Disability.

9. Insofar as the monthly income of the deceased is concerned, P.W.1 deposed that the deceased was a Manager in Vadivudaiamman Transport and was earning a sum of Rs.10,000/- per month and since evidence was examined to prove the same, the Claims Tribunal has rightly fixed the monthly income of the deceased at Rs.7,500/- as per the Judgment of this Court reported in, 2015 (2) TN MAC 624 and considering the fact that the Claimant has taken the treatment for 19 days as inpatient and might not attended the work for six months has awarded compensation towards Loss of Income during treatment period i.e, for 109 days at Rs.27,250/-(250x109) of the claimant and 109 days as treatment period.

10. Considering the fact that the Claimant has sustained communitated fracture of lateral, anterior ends of left 3rd, 4th, 5th and 6th laternal end of right 2nd, 3rd, 4th and 5th ribs, taken treatment as an inpatient for 19 days and surgery was done, this



Court is inclined to grant compensation towards Loss of Income for seven months and hence the compensation towards Loss of Income is enhanced to Rs.52,500/- (7500x7).

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11. On scrutinizing the nature of injuries sustained and as the claimant has to seek help of the attender for carrying on his work, this Court is of the view that the compensation towards Attender charges may be enhanced and hence the same is enhanced to Rs.25,000/-. Apart from that, the compensation awarded towards Extra Nourishment, Transport to Hospital and Pain and Sufferings is very meagre and therefore the same is enhanced to Rs. 30,000/-, Rs.15,000/- and Rs.50,000/- respectively.

12. Taking note of the injuries sustained and nature of treatment undergone and the difficulties faced by the claimant, this Court feels that compensation needs to be granted towards Loss of Amenities. Hence, a sum of Rs.15,000/- is awarded towards Loss of Amenities.

13. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, same are 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 income	27,250/-	52,500/-	Enhanced
2.	Attender charges	4,750/-	25,000/-	Enhanced
3.	Transport to hospital	10,000/-	15,000/-	Enhanced
4.	Extra Nourishment	20,000/-	30,000/-	Enhanced
5.	Damage to Clothing	1,000/-	1,000/-	Confirmed
6.	Medical expenses	1,80,580.64/-	1,80,580.64/-	Confirmed
7.	Pain and sufferings	40,000/-	50,000/-	Enhanced



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8.	Damages for menal and physcial shock	10,000/-	10,000/-	Confirmed
9.	Disability	1,05,000/- (35 x 3000)	1,20,000/- (35 x 3000)	Confirmed
10.	Loss of Amenities	Nil	15,000/-	Granted
	TOTAL	Rs.3,98,580.64 /-	Rs.4,99,080.64 /-	Enhanced
	ROUNDED OFF	Rs.3,98,600/-	Rs.5,00,000/-	Enhanced By Rs.1,01,400/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,98,600/- is hereby enhanced to Rs.5,00,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The Appellants 2 to 4 are entitled for equal apportionment. 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 eight weeks from the date of receipt of a copy of this Judgment, to the credit of M.C.O.P.No. 4815 of 2011 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the Claimant through RTGS, within a period of two weeks. The Appellants/Claimants shall pay necessary Court fee, if any, on the enhanced compensation. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving interest for the period of delay in question, the interest portion for that period should be excluded for the purpose of granting interest. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

(arr)/(shk)



To:

1. Motor Accident Claims Tribunal,
III Court of Small Causes,
Chennai

2. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai 600 104.

+1cc to Mr.A.A.Venkatesan, Advocate SR.No.43216

C.M.A. No.2681 of 2017

JPL(CO)
CB(10/01/2022)