WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.02.2021

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.494 of 2017

1. U.Pappammal,
2. A.Ulaganathan, ... Appellants/ Petitioners

/versus/

1. T.S.Selvam,
2. The New India Ass.Co.Ltd.,
   Having their branch Office at,
   No.80, Arcot Road, Porur,
   Chennai - 116. ... Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicle Act, 1988, against the decree and award dated 02.07.2015 and made in M.C.O.P.No.1049 of 2007 on the file of the Motor Accident Claim Tribunal, III Additional District Court, Poonamallee.

For Appellants : Ms.Y.Jayanthi Bhaskar, for Mr.J.Mahalingam
For R2 : Ms.A.Salome
For R1 : exparte

J U D G M E N T

The appeal seeking enhancement of compensation is filed by the claimants, being not satisfied with the award amount.

2.The claimants are the mother and father of the deceased U.Venkat, who died in the road accident on 02.06.2007. At the time of accident, the deceased was owning a Construction Company by name U.V.Builders Engineers & Contractor. Being an Engineering graduate, claim petition for Rs.11,00,000/- as compensation was filed stating that at the time of accident the deceased was about 37 years and earning Rs.15,000/- per month.

3.According to the claimants, on 02.06.2007 at about 03.30 p.m., when the deceased was riding his motor cycle bearing No.TN-09-AP-7731 along Poonamallee High Road High, the lorry bearing Reg.No.TN-67-A-2005 rash and negligently came from the same direction dashed the motorcyclist. The deceased sustained severe injury and taken to the hospital. He died on the same day. Alleging negligence on the part of the lorry driver claim

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

petition filed against the owner of the lorry and its insurer. The owner of the lorry remained exparte.

4.The 2nd respondent/insurance company filed counter stating that the accident took place due to the total negligence of the deceased and therefore, the claim petition is liable to be dismissed. The accident has occurred when the deceased tried to overtake the lorry. Since the deceased is the tort-feasor, neither the lorry owner nor its insurer is liable to pay any compensation.

5.Before the Tribunal, the claimants examined two witnesses marked 21 exhibits. No oral and documentary evidence was let in by the insurance company to discredit the claim of the claimants.

6.The Tribunal, on considering the evidence, notionally fixed the income of the deceased at Rs.10,000/- per month and applied multiplier '5' based on the age of the mother. A total sum of Rs.5,15,000/- was awarded as compensation to the claimants under conventional and non-conventional heads.

7.In the appeal, the learned counsel appearing for the appellants submitted that the deceased being a Civil Engineering graduate carrying on his own construction company. The Tribunal failed to properly appreciate the experience certificates of the deceased and the construction agreement entered by the deceased for construction and sale of buildings. The Tribunal erred in fixing the income of the deceased as Rs.10,000/- and also by not awarding any compensation for future prospects. The learned counsel also pointed out that the multiplier applied by the Tribunal, based on the claimants age is erroneous. Instead of taking the age of the deceased, the Tribunal has taken the age of the mother/first claimant to fix the multiplier.

8.The learned counsel appearing for the insurance company/2nd respondent herein fairly submitted that the multiplier taken by the Tribunal is not correct and the Hon'ble Supreme Court has held that only the age of the deceased should be taken into consideration for fixing the multiplier. Regarding the notional income fixed by the Tribunal, the learned counsel for the 2nd respondent submitted that in the year 2007, Rs.10,000/- fixed as notional income for an Engineering graduate by the Tribunal is high and the said notional income need no modification.

9.Considering the rival submissions and the records placed before this Court, this Court finds that the deceased had completed his graduation in the year 1993. He was self-employed running a construction company with 14 years of experience as civil engineer, going by the length of experience. The income of the deceased could have been not less than Rs.12,000/- per month and future prospects 40% also to be added for arriving just compensation.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

10.Accordingly, the award to the claimant is enhanced as below.

Sl. No.	Particulars	Award of the Tribunal Rs.	Award enhanced by this Court Rs.	Enhanced/ Confirmed/ Reduced/ Awarded/omitted
1.	Loss of income	3,00,000-00 (10000-1/2x12x5)	15,12,000-00 (12000+40% (4800)-50% x12x15)	Enhanced
2.	Pain and sufferings	1,00,000-00	-----	Omitted
3.	Funeral expenses	15,000-00	15,000-00	Confirmed
4.	Loss of estate	----	15,000-00	Awarded
5.	Loss of love and affection to the parents of the deceased	1,00,000-00	40,000-00 (20000x2)	Reduced
	Total	5,15,000-00	15,82,000-00	Enhanced

11.The award of the Tribunal is enhanced from Rs.5,15,000/- to Rs.15,82,000/- with interest at the rate of 7.5% p.a., from the date of petition till the date realisation. The said amount shall be deposited by the 2nd respondent/insurance company within a period of 12 weeks from the date of receipt of a copy of this order, (less the amount already deposited if any). While calculating the period of interest, the delay of 264 days caused in filing the appeal and the period between 08.06.2009 and 26.01.2014 (when the claim petition was dismissed for default and later, restored) shall be excluded. On deposit of the enhanced compensation with accured interest, the claimants 1 and 2/appellants 1 and 2 are entitled to share the enhanced award amount equally and withdraw the same on filing appropriate application.

12. In the result, this Civil Miscellaneous Appeal is allowed. No order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ari

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

To

The III Additional District Judge,
Motor Accident Claims Tribunal,
Poonamallee.

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

+1cc to Mr.C.Ramesh Babu, Advocate SR.No. 5339

C.M.A.No.494 of 2017

GP(CO)
A.SK(30.09.2021)

https://hcservices.ecourts.gov.in/hcservices/