



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2760 of 2011

1.Subbammal
2.Narashimman
3.Govindan

.. Appellants / Petitioners

Vs.

1.R.Sagar
(R1 was set exparte in the trial Court)

2.Reliance General Insurance Company Limited
Heavitreet, No.28, S.T.Road
Chetpet, Chennai-31.

.. Respondents / Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.08.2009 made in M.C.O.P.No.2461 of 2008 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellants : Mr.N.M.Elumalai
For R2 : Mr.R.Sunil Kumar

J U D G M E N T

(This matter is heard through "Video-conferencing")

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 21.08.2009 made in M.C.O.P.No.2461 of 2008 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.2461 of 2008 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the death of one Madhavan, who died in the accident that took place on 01.06.2008.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding of the motorcycle by the 1st respondent and directed the 1st respondent as well as 2nd respondent/Insurance Company being insurer of the said motorcycle to pay jointly and severally a sum of Rs.2,00,000/- as compensation to the appellants.

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

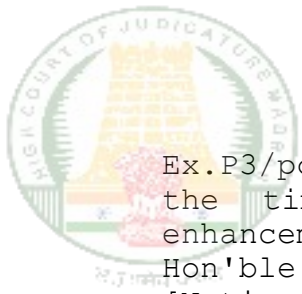
5.The learned counsel appearing for the appellants contended that the deceased was working as a cobbler at the time of accident and was earning a sum of Rs.7,000/- per month. The Tribunal fixed only a meagre sum of Rs.4,500/- per month as notional income of the deceased. The deceased was aged 57 years at the time of accident. The Tribunal ought to have applied multiplier '9' instead of '5'. 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 2nd respondent/Insurance Company contended that in the absence of evidence with regard to income of the deceased, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased and the same is not meagre. The Tribunal after considering all the materials on record, awarded compensation, which is also not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.The 1st respondent was set exparte before the Tribunal and hence, notice to the 1st respondent has been dispensed with.

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 available on record.

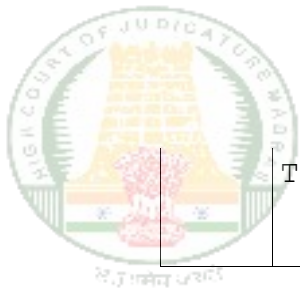
9.It is the contention of the appellants that the deceased was working as a cobbler at the time of accident and was earning a sum of Rs.7,000/- per month. The appellants did not file any document to prove the income of the deceased. In the absence of any evidence with regard to income of the deceased, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident is of the year 2008. The monthly income fixed by the Tribunal is meagre and hence, a sum of Rs.7,000/- per month is fixed as notional income of the deceased. As per



Ex.P3/post-mortem certificate, the deceased was aged 60 years at the time of accident. The Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the appellants are entitled to 10% enhancement towards future prospects. The Tribunal applied multiplier '5' and the same is not correct. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier applicable is '9'. There are three dependants of the deceased. The Tribunal has rightly deducted 1/3rd towards personal expenses. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.5,54,400/- (Rs.7,000/- + 700 [Rs.7,000/- X 10%] X 12 X 9 X 2/3). The amounts awarded by the Tribunal towards loss of consortium and funeral expenses are meagre and hence, the same are enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. The compensation awarded by the Tribunal towards loss of love and affection is just and reasonable and hence, the same is hereby confirmed.

10.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	1,80,000	5,54,400	Enhanced
2.	Loss of love and affection	10,000	10,000	Confirmed
3.	Loss of consortium	5,000	40,000	Enhanced
4.	Funeral expenses	5,000	15,000	Enhanced
5.	Loss of estate	-	15,000	Granted



Total	2,00,000	6,34,400	Enhanced by Rs.4,34,400/ -
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11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,00,000/- is hereby enhanced to Rs.6,34,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Both the 1st respondent as well as the 2nd respondent/Insurance Company are jointly and severally 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 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. The appellants are directed to pay the necessary Court fee on the enhanced award amount. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judge
(Motor Accident Claims Tribunal)
Small Causes, Chennai.
2. The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mr.N.M.Elumalai, Advocate, S.R.No.2189
+1cc to Mr.R.Sunil Kumar, Advocate, S.R.No.2436

C.M.A.No.2760 of 2011

RP[co]
NSK 30/03/2022