



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.M.A. NO.2437 OF 2019

1. R. Murugammal
2. R. Mariappan
3. R. Prakash
4. R. Mohan
5. R. Meena

... Appellants/Petitioners

Vs.

1. E.Ravi
2. Cholamandalam,
Ms General Insurance Co.Ltd.,
No.163A, Thambuchetty Street,
2nd Floor, Chennai.

... Respondents/Respondents.

PRAYER:

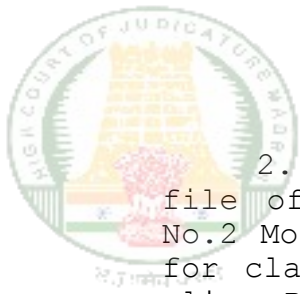
Petition filed under Section 173 of Motor Vehicle Act, To enhance the amount awarded in MCOP.940/2015 dated 07-08-2018 on the file of the MACT Small Causes Court Chennai (Spl. Sub-Court No.2) Chennai.

For Petitioners: M/s.K.Varadha Kamaraj

For Respondents: Mr.E.Rajadurai for M/s M.B.Gopalan
and Associates [R.2]
No appearance [R.1]

JUDGEMENT

The claimant has filed this appeal seeking an enhancement of the compensation granted by the tribunal below. The respondents have not preferred any appeal against the said award. The brief facts of this case are as follows:



2. The claimants had filed M.C.O.P.No.940 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2 Motor Accident Claims Tribunal, Small Causes Court, Chennai for claiming compensation on account of the death of one Raghu alias Raghavan, the husband of the 1st claimant, and father of the claimants 2 to 4 in a road accident on 9.10.2014. It is the case of the claimants that the deceased was walking on the Keezhanoor Cemetery Road when a Tata Ace Van belonging to the 1st respondent driven in a rash and negligent manner by its driver dashed against the deceased as a result of which he had sustained multiple injuries and died on account of these injuries.

3. The claimants had sought for a compensation of Rs.30,00,000/- stating that the deceased who was aged 55 years was working as a Mason and earning a sum of Rs.600 per day. The 1st respondent remained absent and was set ex-parte. The 2nd respondent had filed a counter inter alia denying the nature of injuries and the fact that the death was the result of these injuries. That apart the insurance company had stated that the compensation claimed was highly exorbitant. The occurrence of the accident was also denied.

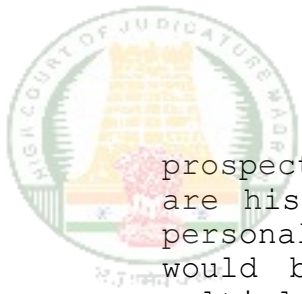
4. The Tribunal below on considering the evidence held the driver of the Tata Ace to be liable for the accident and awarded a sum of Rs.5,41,900/- challenging the said award the claimants have preferred this appeal.

5. The learned counsel appearing on behalf of the claimant would submit that the Tribunal below has erroneously fixed the notional income at Rs.6,500/- not taking into account the age of the deceased. It is his contention that the accident occurred in the year 2014 and therefore, the notional income ought to have been a sum of Rs.9,000/-. He would also submit that no amounts have been granted under the conventional head of loss of love and affection for the children. He would therefore submit that the award needs to be revised.

6. Per contra, the learned counsel appearing for the Insurance Company Mr.E.Rajadurai would submit that the award was well in order and does not require any modification.

7. Heard the learned counsels and perused the records.

8. The deceased is aged 55 years and it is an admitted case that his death was the result of a road traffic accident. He is claimed to be a mason however, no proof has been provided for the same. The accident being of the year 2014, a monthly notional income can be fixed at a sum of Rs.9,000/-. Considering the age of the deceased, 10% can be added for his future



prospects and multiplier of '11' is adopted. Since the claimants are his wife and children, 1/4th has to be deducted towards his personal expenses. Therefore, the annual income after deduction would be a sum of Rs.1,18,800 - Rs.29,700 = Rs.89,100, a multiplier of '11' is adopted. Therefore, the loss of income would be Rs.89,100 X 11 = 9,80,100/-. Under the head loss of consortium, for the 4 children Rs.40,000/- have been granted. No amounts have been granted under the head of love and affection, considering the age of the deceased each are entitled to a compensation of 20,000/-. Therefore, the amount under the head of love and affection (Filial Consortium) would be a sum of Rs.80,000/-. Therefore the modified award would be 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.	Pecuniary loss	4,71,900/-	9,80,100/-	Enhanced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
5.	Love and Affection	Nil	80,000/-	Granted
	TOTAL	5,41,900/-	11,30,100/-	Enhanced by Rs.5,88,200/-

9. Since the Tribunal below has held that there has been a violation of the policy condition, the amount shall be paid and thereafter recovered from the 1st respondent. In all other respects the award remains unaltered.

10. Therefore, the Civil Miscellaneous Appeal is allowed and the compensation of Rs.5,41,900/- awarded by the Tribunal is hereby enhanced to a sum of Rs.11,30,100/- together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other aspects the award of the Tribunal is confirmed. The 2nd respondent/ Insurance Company is directed to deposit the said amount (Rs.11,30,100/-) to the credit of M.C.O.P.No.940 of 2015 on the file of the Motor Accident Claims Tribunal (Small causes Court Chennai) Special Sub Court No.2, together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt



of a copy of this Judgement. On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, along with interest and costs, after adjusting the amount if any already withdrawn. The proportion of allocation of shares adopted by the Tribunal shall stand confirmed. The claimants shall pay the court fee for the enhanced amount, if payable. The Trial Court shall not disburse the amount till such time as the certified copy showing proof of payment of the entire Court fee has been produced by the claimant. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. MACT Small Causes Court,
Chennai (Spl. Sub-Court No.2) Chennai.

+1cc to M/s.K.Varadha Kamaraj, Advocate, S.R.No.18045

C.M.A. No.2437 of 2019

PVS (CO)
PM/10/06/2022