



C.M.A.No.3096 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.3096 of 2021

1.Vijaya

2.Nagabooshanam

3.Priyanka

.. Appellants

Vs.

1.V.Manikandan

(R1 remained exparte before Tribunal.
Hence, notice to R1 dispensed with)

2.United India Insurance Co. Ltd.,
No.48, Arcot Road, Saligramam,
Chennai – 600 093.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.10.2017, made in M.C.O.P.No.154 of 2016, on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee.

For Appellants : Mr.Ma.P.Thangavel
For R2 : Mr.C.Paranthaman



J U D G M E N T

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(Judgment of the Court was delivered by V.M.VELUMANI, J.)

This Civil Miscellaneous Appeal has been filed by the appellants-claimants for enhancement of compensation granted by the Tribunal in the award dated 09.10.2017, made in M.C.O.P.No.154 of 2016, on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee.

2.The appellants are the claimants in M.C.O.P.No.154 of 2016, on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee. They filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of one N.Prathap Kiran, who died in the accident that took place on 23.12.2015.

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 Mahindra Van belonging to 1st respondent and directed the 2nd respondent – Insurance Company, being the insurer of the Mahindra Van to pay a sum of Rs.18,02,940/- as compensation to the appellants.



4. Not being satisfied with the amounts awarded by the Tribunal,

5.The learned counsel appearing for the appellants contended that

6. Per contra, the learned counsel appearing for the 2nd respondent-



amounts awarded by the Tribunal towards funeral expenses and loss of love and affection to appellants 1 to 3 are highly excessive. The total compensation awarded by the Tribunal is not meagre. 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. From the materials on record, it is seen that it is the case of the appellants that the deceased was aged 23 years, working as Office Assistant in I.M. Enterprises and was earning a sum of Rs.15,000/- per month. The appellants filed Appointment Order of the deceased and marked as Ex.P15 and marked the salary certificate of the deceased as Ex.P16. As per Ex.P16, the last drawn salary of the deceased was Rs.11,600/- per month. The Tribunal considering Ex.P16, rightly fixed the monthly income of the deceased at Rs.11,600/-. The learned counsel appearing for the appellants contended that the deceased was in a permanent job and the Tribunal failed to grant 50% enhancement towards



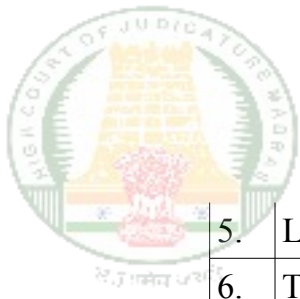
future prospects. Considering the fact that the deceased was working in a Private Company and there is no evidence to show that the deceased was a permanent employee, the appellants are not entitled to 50% enhancement towards future prospects. As per Ex.P8 / Transfer Certificate, the deceased was aged 23 years at the time of accident. As per the judgment of the Hon'ble Apex Court reported in **2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others]**, the appellants are entitled to 40% enhancement towards future prospects. The Tribunal having fixed the age of the deceased at 23 years, erroneously applied multiplier '17' and awarded compensation. The correct multiplier applicable as per the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another]**, is '18'. The deceased was a bachelor at the time of accident and the Tribunal erroneously deducted 1/3rd towards personal expenses instead of deducting 50%. Thus, by fixing a sum of Rs.11,600/- as monthly income of the deceased, granting 40% enhancement towards future prospects, applying multiplier '18' and deducting 50% towards personal expenses of the deceased, the compensation awarded by the Tribunal towards loss of dependency is enhanced to Rs.17,53,920/-



{Rs.16,240/- [Rs.11,600/- + Rs.4,640/- (40% of Rs.11,600/-) X 12 X 18 X 1/2]}. The Tribunal has granted excessive sum of Rs.1,00,000/-

towards loss of love and affection to the 1st appellant and Rs.50,000/- to 2nd appellant. Hence, the same are modified and reduced to Rs.40,000/- each towards loss of filial consortium. A sum of Rs.50,000/- awarded by the Tribunal towards loss of love and affection to 3rd appellant, who is the sister of the deceased is excessive and hence, the same is reduced to Rs.40,000/-. The Tribunal has granted excessive sum of Rs.25,000/- towards funeral expenses and hence, the same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount towards loss of estate and transportation. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate and Rs.10,000/- towards transportation. 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 dependency	15,77,940/-	17,53,920/-	Enhanced
2.	Loss of filial consortium to appellants 1 & 2	1,50,000/-	80,000/- (Rs.40,000/- each)	Reduced
3.	Loss of love and affection to 3 rd appellant	50,000/-	40,000/-	Reduced
4.	Funeral expenses	25,000/-	15,000/-	Reduced



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5.	Loss of estate	-	15,000/-	Granted
6.	Transportation	-	10,000/-	Granted
Total		Rs.18,02,940/-	Rs.19,13,920/-	Enhanced by Rs.1,10,980/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,02,940/- is hereby enhanced to Rs.19,13,920/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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 six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.154 of 2016, on the file of the Motor Accident Claims Tribunal, II Additional District Court, Poonamallee. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellants are directed to pay the necessary court fee on the enhanced award amount as per the order of this Court



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dated 06.08.2021 made in C.M.P.No.12105 of 2021 in C.M.A.SR.No.61318 of 2021. The appellants are not entitled to any interest for the delay period, as per the order of this Court dated 04.10.2021 made in C.M.P.No.13038 of 2021 in C.M.A.SR.No.61318 of 2021. No costs.

(V.M.V., J) (T.V.T.S., J)
23.09.2022

krk

Index : Yes / No
Internet : Yes / No

To

1.The II Additional District Judge,
Motor Accidents Claims Tribunal,
Poonamallee.

2.The Section Officer,
VR Section,
High Court,
Madras.



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