



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.3911 of 2019

1.Arulraj

2.Aakash

3.Aswini

... Appellants/ Petitioners

-Vs.-

1.Bharathi

2.The Divisional Manager,

The United India Insurance Company Limited,
T.P.Hub, Motor Third Party Claims Office,
3rd Floor, T.K.M. Complex,
Vellore.

... Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act. 1988, against the judgement and decree dated 31.07.2019 made in M.C.O.P.No.754 of 2018 on the file of the 1st Additional District and Sessions Judge at Vellore.

For Appellants	:	Mr.V.Pari Vallal
For R1	:	Served - No appearance
For R2	:	Mr.S.Arun Kumar

J U D G M E N T

The claimants are the appellants before this Court seeking enhancement of the award dated 31.07.2019 passed by the learned Additional District and Sessions Judge, MACT, Vellore in M.C.O.P.No.754 of 2018.

2. The facts in brief necessary for disposing of this Appeal are as follows:-

The appellants are the husband and children of the deceased Reeta Mary. The said Reeta Mary had died in a road accident on 22.08.2018 at about 12.40 p.m on Vellore to Adukkambarai Main Road. The deceased was aged 43 years at the time of her death. The deceased was proceeding as a passenger in an Auto rickshaw, bearing Registration No.23 CD 9135 from her place to Bagayam. At that time, the bus belonging to the first respondent herein, bearing Registration No.TN 25 AS 3058 came in the opposite



direction in a rash and negligent manner and hit the Auto Rickshaw, as a result of which, the said Reeta Mary had sustained injuries, which led to her death in the hospital during the course of treatment.

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3. The husband and the children of the deceased have therefore, filed M.C.O.P.No.754 of 2018 on the file of the I Additional District Judge, Vellore, claiming compensation of a sum of Rs.50,00,000/-. They had stated that the said Reeta Mary was a Snack Vendor as well as a Tailor and earning a monthly income of Rs.25,000/-.

4. The second respondent-Insurance Company had refuted the allegations contained in the claim petition in their counter. They had stated that the age and occupation of the deceased was not as stated in the claim petition and they had also denied, she had travelled as a passenger in the Auto Rickshaw. It is also their case that as per F.I.R, 5 persons were travelling in the Auto Rickshaw exceeding the seating capacity and there was a violation of permit Rules. Since the accident had taken place by virtue of head on collusion, the liability has to be apportioned on both the drivers.

5. The Tribunal, on considering the records available and the oral and documentary evidence produced, awarded a sum of Rs.12,65,056- under various heads, which is detailed hereunder:

Heads	Amount in Rs.
Loss of income	11,20,056.00
Loss of consortium	40,000.00
Love and affection	60,000.00
Transport expenses	10,000.00
Funeral expenses	15,000.00
Loss of Estate	20,000.00
Total	12,65,056.00
Rounded Off	12,65,000.00

Aggrieved by the said Award, the claimants are before this Court.

6. The appellants are particularly aggrieved by the fact that the Tribunal had only arrived a notional income of Rs.8,000/-, to which, 25% was added towards the future prospects.

7. Heard the learned counsel for the appellant and the learned counsel appearing for the second respondent-Insurance Company and perused the materials available on record.



8. Considering the age of the deceased and the year of the accident, the notional monthly income should be fixed at Rs.10,000/- and 25% has to be added to future prospects, to which, a multiplier of 14 has to be adopted and 1/3 has to be deducted towards personal expenses. Therefore, the re-worked compensation payable under the head of Loss of Dependency is Rs.14,00,000/- $(10,000 + 25\% \times 12 \times 14 - 1/3)$. The amount under the head of loss of Love and Affection has to be enhanced to a sum of Rs.80,000/- as Filial Consortium. The transport expenses can be converted as Loss to Estate and to which, a sum of Rs.5,000/- has to be added. Therefore, the re-worked compensation would be as follows:-

Heads	Amount in Rs.
Loss of dependency $(10,000 + 25\% \times 12 \times 14 - 1/3)$	14,00,000.00
Loss of Consortium	40,000.00
Funeral expenses	15,000.00
Loss to Estate	15,000.00
Filial consortium	80,000.00
Total	15,50,000

9. The Tribunal has apportioned the liability 75% on the Insurance Company and 25% on the driver of the Auto Rickshaw. Therefore, the claimants would be entitled to a sum of Rs.11,62,500/-.

10. The appeal is partly allowed and the Award of the Tribunal is modified, enhancing the compensation amount from Rs.12,65,000/- to Rs.15,00,000/-. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.754 of 2018 along with interest at the rate of 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 judgment. On such deposit being made, the claimants are permitted to withdraw the award amount, along with accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. The claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the



enhanced amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimants. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

srn
To

1.The I Additional District and Sessions Judge,
Vellore.

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

+1 cc to Mr.S.Arun Kumar, Advocate Sr.NO.21678

+1 cc to Mr.V..V.Pari Vallal, Advocate Sr.NO. 21928

C.M.A.No.3911 of 2019

kk(CO)
A.SK(17/05/2022)