



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2018

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD) No.1161 of 2017

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1. Devi
2. Ganesan
3. Karthika

... Appellants/Petitioners

Vs.

1. Unicorn Logistics India Pvt. Limited,
No.207, Parivakkam Road,
Poonamalai,
Chennai - 56
(dispense with notice to R1)

2. The Branch Manager,
United India Insurance Company Limited,
having its office at
No.794/11, Trunk Road,
Poonamalee, Chennai.
Rep. by its General Manager,
United India Insurance Co Ltd
having its Regional Office at
61/2694-1st Floor (Indian Bank Upstairs)
South Main Street, Thanjavur. .. Respondents / Respondents

PRAYER: Civil Miscellaneous Petition filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree of Motor Accident Claims Tribunal / Special District Judge Court, Thanjavur in MCOP.No.573 of 2017, dated 08.11.2017 claiming enhanced compensation of about Rs.7,00,000/- as against the award of Rs.11,22,800/- made by the Tribunal for appellants 1 and 2 and rejecting the claim of third appellant.

For appellant : Mr.N. Balakrishnan
For R2 : Mr.C. Jawahar Rajendran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Award of Motor Accident Claims Tribunal / Special District Judge Court, Thanjavur, in MCOP.No.573 of 2017, dated 08.11.2017.

2. The appellants are the claimants in MCOP.No.573 of 2017, on the file of the Motor Accidents Claims Tribunal / Special District Judge, Thanjavur. They have filed the said claim petition claiming a sum of Rs.80,00,000/- as compensation for the death of one Ajithkumar in the accident that occurred on 06.07.2016.



3. According to the appellants, while the deceased Ajith Kumar was proceeding in Two Wheeler bearing Regn.No.TN 05 R 8311 with a pillion rider, at that time, from the same direction, the driver of the first respondent's vehicle, bearing its Regn.No. TN 20 BQ 8559 Taurus Lorry, drove the vehicle in a rash and negligent manner and dashed against the two wheeler and due to the accident, the said Ajith Kumar sustained severe injuries and admitted in the hospital, where he died. Hence, the legal heirs and dependants of the deceased filed the said claim petition claiming a sum of Rs.80,00,000/- as compensation.

4. Before the Tribunal, the second respondent / Insurance Company filed counter and contended that due to the negligence of the deceased the accident has been occurred and hence, the second respondent is not liable to pay any compensation to the appellants.

5. The Tribunal considering the pleadings oral and documentary evidence let in by the parties came to the conclusion that the accident occurred only due to rash and negligent driving by driver of the vehicle belonging to the first respondent and considering the materials available on record, awarded a sum of Rs.11,22,800/- as compensation and dismissed the claim petition in respect of third appellant.

6. Not being satisfied with quantum of compensation awarded, the appellants have come out with present appeal for enhancement of compensation.

7. The learned counsel appearing for the appellants contended that the deceased viz., Ajith kumar, was studying second year Catering Technology in the reputed Amirtha College at Chennai and was a bright student. The Tribunal has fixed very meagre amount of Rs.6,500/- as notional income of the deceased and the Tribunal erred in holding that the third appellant is not a dependant and legal heir of the deceased. The Tribunal ought to have deducted $\frac{1}{3}^{\text{rd}}$ as per the Judgment of the Hon'ble Supreme Court reported in the Case of Sarla Verma (2009(2) MAC 1 (SC) and 2012 (1) TNMAC 489 DB) and the amount awarded in other heads are also too meagre and hence, the same has to be enhanced.

8. Per contra, the learned counsel appearing for the second respondent / Insurance Company contended that the deceased was only a student and the appellants have not substantiated their contention that the deceased was working as a electrician and was earning Rs.30,000/- per month. The Tribunal after considering the above facts have fixed the notional income, granted compensation and there is no reason for enhancement of compensation.

9. I have heard the learned counsel appearing on either side and perused the materials available on record.

10. From the materials on record, it is seen that the deceased was second year Catering Technology Student and aged about 20 years at the time of accident and considering the age and course in which he was studying catering college and good will of the deceased getting decent and well paid job, the notional income fixed by the Tribunal is very meagre and hence, the same has to be enhanced. The Vice Principal of College deposed that the batch mates of deceased got appointment in well paid jobs in the campus interview are well placed in life. As per the Judgment of this Court reported in 2015(2) TNMAC 171 in the case of R.Mallika and others Vs. A. Babu and others, and considering the fact that the deceased would have got decent job in future, the notional income of the deceased is fixed at Rs.12,000/- per month. Since the deceased was aged about 20 years, the Tribunal considering the age granted 40% enhancement towards future prospects and deducted 50% for his personals expenses and applied multiplier 18. In view of same, the loss of income is arrived as follows:

$$12,000/- + 40\% = \text{Rs.}16,800/- \quad (-) \text{Rs.}8,400/- \quad (50\%) \\ = \text{Rs.} 8,400/- \times 12 \times 18 = \text{Rs.}18,14,400/-$$

Accordingly, the appellants are entitled to a sum of Rs.18,14,400/- towards loss of income. In all other aspects, the amount awarded by the Tribunal is hereby confirmed. Therefore, the award of the Tribunal is enhanced from Rs.11,22,800/- to Rs.19,54,400/- in the following manner:-

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted
1	Loss of Income	9,82,800.00	18,14,400.00	Enhanced to Rs.8,31,600/-
2	Loss of love and affection	1,00,000.00	1,00,000.00	Confirmed
3	Funeral Expenses	15,000.00	15,000.00	Confirmed
4	Transportation Charges	10,000.00	10,000.00	Confirmed
	Total	11,22,800.00	19,54,400.00	Enhanced by Rs.8,31,600/-

11. The interest awarded by the Tribunal at the rate of 7.5% per annum remains un-altered.

12. The submission made by the appellants that the third appellant is dependant of the deceased has considerable force. The third appellant, who is the sister of the deceased is also residing along with the appellants 1 and 2 with deceased and she was residing with the deceased before his death. The dismissal of the claim



petition against the third respondent is hereby set aside. The first appellant, who is the mother of the deceased is entitled to 50% of the compensation awarded and the appellants 2 and 3, who are the father and sister of the deceased entitled to 25% each of the compensation.

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13. The second respondent /Insurance Company is directed to deposit the said sum of to Rs.19,54,400/- together with interest at 7.5% per annum and costs to the credit of MCOP.No.573 of 2017, on the file of the Motor Accident Claims Tribunal / Special District Judge Court, Thanjavur, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this Judgment and on such deposit being made, the appellant / claimant is permitted to withdraw their share with accrued interest and costs on filing necessary application before the Tribunal.

14. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Special District Judge,
The Motor Accident Claims Tribunal/
The Special District Court, Thanjavur
2. The Record Keeper,
VR Section, Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

C.M.A. (MD) No.1161 of 2017
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