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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2135 of 2007

1.P.Tamilarasi
2.P.Gomathi
3.V.Mathivani
4.N.Kavitha
5.Amudha
6.Pavayee

.. Appellants/Petitioners

Vs.

1.M.Sekar
2.D.Elangovan

3.National Insurance Co-Ltd.,
74-A, Paramathy Road,
Namakkal.

(Notice to the 1st respondent is not
necessary in this CMA. Hence given up.. Respondents/Respondents

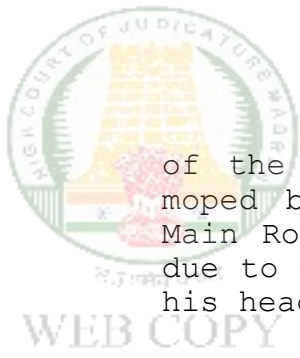
PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.11.2005 made in M.C.O.P.No.446 of 2002 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Erode.

For Appellants : Mr.N.Manokaran
For R3 : M/s.N.B.Surekha

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the claimants / appellants against the award dated 17.11.2005 passed in M.C.O.P.No.446 of 2002 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Erode.

2.The legal representatives of one Periasamy have filed a petition in M.C.O.P.No.446 of 2002 before the claims Tribunal claiming a sum of Rs.30,00,000/- as compensation. It is the case



of the claimants that the aforesaid Periasamy, while riding a moped bearing Registration No.TN 28 9468 on Namakkal to Salem Main Road, was hit by a lorry bearing Registration No.TSH 2656, due to which the deceased fell down and the lorry wheel ran over his head and he died on the spot.

3.The Tribunal, based on the evidence and documents produced, has fastened the liability on the part of the lorry driver, which was insured with the third respondent herein and has quantified Rs.8,24,000/- as compensation payable by the third respondent to the appellants herein. The breakup details of the compensation awarded by the Tribunal are thus:-

S. No.	Description	Amount awarded by Tribunal (Rs.)
1.	Loss of Income	7,92,000/-
2.	Loss of Love & Affection	30,000/-
3.	Funeral Expenses	2,000/-
	Total	8,24,000/-

4.The learned counsel for the appellants / claimants submitted that the monthly income of the deceased taken by the Tribunal is very low and the Tribunal ought to have fixed the monthly contribution of the deceased at Rs.25,000/-. The learned counsel further submitted that the amount awarded under other heads are also very meagre and they need substantial enhancement.

5.Per Contra, the learned counsel for the third respondent/Insurance Company submitted that the Tribunal erred in fastening the liability on the part of third respondent herein. He further submitted that though the appellants have stated that the deceased earned Rs.30,000/- per month from and out of various sources, they have not filed any document to prove the source of income. He also submitted that all the appellants herein are not the dependants of the deceased.

6.To appreciate the said contentions, it is necessary to re-look into the award passed by the Tribunal.

7.A perusal of the award passed by the claims Tribunal would go to show that the Tribunal, based on the F.I.R and witnesses account and the documents produced on the side of the appellants, has fastened the liability on the driver of the lorry, who drove the vehicle insured with the third respondent herien in a rash and negligent manner and hit the Moped riding by the deceased, thereby causing the accident. To rebut the



same, no evidence or documents were adduced by the third respondent herein before the Tribunal. If the third respondent is really aggrieved, nothing prevented them from either adducing any witness or marking any documents before the Tribunal. In such circumstances, the Tribunal, based on the available document, has rendered its finding on negligence, which, in the opinion of this Court, is perfectly valid and justifiable, warranting any interference.

8.As regards the quantum of compensation, the age, avocation and income of the deceased were taken note of, as per the available documents produced, at the time of passing of the award by the Tribunal. The evidence of P.W.5 coupled with Ex.A15 to Ex.A18 and Ex.A32 would establish the income of the deceased. It is averred that the deceased was getting income from agricultural lands, which was evident from Exs.A35 and A36. All these documents clearly establish a fact that there was additional income, apart from regular income, to the deceased.

9.Though the Tribunal has rendered its findings with regard to avocation of the deceased, his earning from other business has not been taken into account by the Tribunal. There are enough materials produced by the claimants substantiating the earnings of the deceased. While that be so, the Tribunal ought to have taken note of the oral and documentary evidence, while quantifying the monthly income, instead of simply negating the ground that the deceased was not supposed to get private income. That apart, the Tribunal has not awarded any sum towards loss of consortium. Thus, this Court is of the opinion that the Tribunal ought to have appreciated those documents and awarded some more amount towards loss of income and other heads.

10.The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. This Court is of the view that though the Tribunal has assessed the damages, but it is slightly low. Hence, the quantum of compensation arrived at by the Tribunal, on all the heads, needs significant enhancement. In such view of the matter, the amount arrived at by the Tribunal under each and every heads by the Tribunal is restructured and such Break-up details are thus:



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S. No.	Description	Amount awarded by Tribunal (Rs.)
1.	Loss of Income (Rs.9,000/- x 12 x 11 (-) 1/4th)	8,91,000/-
2.	Loss of love and affection	30,000/-
3.	Loss of consortium	10,000/-
4.	Funeral Expenses	5,000/-
5.	Loss of Estate	25,000/-
	Total	9,61,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the total amount of compensation arrived at by the Tribunal at Rs.8,24,000/- is hereby enhanced to Rs.9,61,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary court fee for the enhanced compensation within a period of two weeks from the date of receipt of copy of this judgment. The third respondent / Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw their respective shares of the enhanced award amount as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount, already withdrawn if any. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gbi/srk

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Erode.



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

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+1 cc to Mr.N.Manoharan Advocate sr57167
+1 cc to Ms.N.B.Surekha Advocate sr56748

C.M.A.No.2135 of 2007

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