

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.531 of 2015

1.Thulasiammal @ Thulasimani
2.P.V.Thangamuthu

... Appellants /Petitioners

Vs.

1.Velusamy
2.P.Ramya
3.The Branch Manager,
Cholamandalam General Insurance Co.Ltd.,
Having Office at Karur,
Karur District.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.03.2011 made in M.C.O.P.No.647 of 2009, on the file of the MACT/Principal District Court Erode.

For Appellant : Mr.N.Manokaran

For R1 & R2 : No appearance

For R3 : Mrs.Harini for
M/s.Vijayaraghavan

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 23.03.2011 made in M.C.O.P.No.647 of 2012, on the file of Motor Accident Claims Tribunal, Principal District Court Erode.

2.The brief facts is as follows:

On 22.05.2009 at about 4.40pm, the deceased was travelling as pillion in the motor cycle bearing Registration No.TN-33-A-M-3983 which was driven by one Sathishkumar on Perundurai to Vellore Road near Mannakattupallam from east to west. At that time, the 1st respondent drove a vehicle bearing Registration No.TN-47-S-6998 from the opposite direction in a

rash and negligent manner and hit against the motor cycle in which the deceased was sustained fatal injuries and died.

3.This appeal has been preferred by the claimant aggrieved against the award made by the Tribunal at Rs.1,22,500 against the claim of Rs.10,00,000.

4.It is aggrieved by the appellant that the deceased met with an accident on 21.05.2009 while he was travelling as a pillion rider in motor cycle bearing Registration No.TN-33-A-M-3983. The appellants are the legal heirship of the deceased. The grievance of the appellant was earning Rs.4,000/- per month, and aged about 24 year and hence claim made by the appellant at Rs.10,00,000/- ought to have been awarded by the tribunal. The notional income determined by the tribunal is very much meagre and further multiplier applied to calculated the loss of income of the deceased, is also not proper. The Tribunal has also committed an error in deducting 50% towards his own expenses notwithstanding the fact that the mother is aged about 48 years. The other grievance raised by the appellant is that the "Tribunal has fixed the life expectancy of the deceased as 75 years. In respect of life expectancy the supreme Court in the case of Jyotsna De -Vs- State of Assam (1987 ACJ 172) has fixed 70 years. The same was followed by this Court in 1996(1) LW 306". The Tribunal has not consider the feature prospects and the dependency of the parents who have lost their son in their old age and these aspects were not considered by the tribunal. On the whole, the Tribunal has not awarded the reasonable amount, and the sum awarded at Rs.1,25,000/- is not a just compensation and it is totally on the meagre side and the said award has to be enhanced.

5.On perusal on records it is observed that the deceased was 24 years old at the time of death, the deceased was studying final year diploma in electrician course at Kongu Industrial Training Centre. The Exs.P.8 to P.11 are course certificate and further Ex.P.12 is the conduct certificate, Ex.P.13 is the Implant Training Certificate and Ex.P.14 is the Participation certificate in Aptech Computer Education, Ex.P.15 is the certificate issued by the Training Centre for studying in the I.T.C from year 2007 to 2009. Hence, these are all the educational qualifications which are clearly submitted by the claimant who lost their son, who was an engineer graduate with all efficient qualifications. In spite of above qualification, the future prospects assessed by the Tribunal by taking the income at Rs.15,000 per month and deducting 50% towards personal expenses, assessed the loss of income at Rs.7,500, which is very much on the meagre side. Apart from that, multiplier adopted to the age of the deceased is highly

erroneous one. The other arguments advanced by the appellant is that the Tribunal has awarded a sum of Rs.30,000/- towards loss of love and affection is very much on the meagre side. Considering the educational qualification and the age of the deceased which are very much proper by way of evidence and records, this Court is inclined to enhance the compensation awarded by the tribunal in various heads.

6. On the other hand, the respondent make an arguments for the assessment made by the Tribunal is reasonable. The said argument of the respondent cannot be considered in view of the fact that the deceased was only 24 years old person with all qualifications and his future prospects were affected because of the accident and the appellants who have lost all their future along with the love and affection shall be compensated properly by way of compensation. In view of the above, considering the age and the qualifications, the income is fixed at Rs.6,000 per month and considering the fact that deceased was a unmarried person, adding of 50% towards future prospects would be very much proportionate. Considering the age of the deceased and number of appellants, multiplier 18 and deducting at 50% towards personal expenses would be proper. Hence, the sum awarded under the head loss of income is modified at Rs.9,72,000/- $(9000 (6000+3000)+50\% \times 12 \times 18 \times 1/2)$, which is very much proper and reasonable. Similarly the sum awarded under the two heads and also properly modified. Thus, the sum awarded by the Tribunal is modified by this Court as mentioned below:-

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	82,500/-	9,72,000/-	Enhanced
2.	Love and Affection	30,000/-	80,000/-	Enhanced
4.	Loss of estate	-	15,000/-	Granted
5.	Funeral expenses	5,000/-	15,000/-	Enhanced
7.	Transportati on	5,000/-	10,000/-	Enhanced
	Total	Rs.1,22,500	Rs.10,92,000	enhanced by Rs.9,69,500/-

7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,22,500/- is hereby enhanced to Rs.9,69,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

8.The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondents are 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 six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their shares on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Court,
Motor Accident Claims Tribunal,
Erode.

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

+1cc to Mr.N.Manokaran, Advocate Sr.63539

+1cc to Mr.M.B.Gopalan, Advocate Sr.63965

C.M.A.No.531 of 2015

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srg 07/08/2020