

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2369 of 2019

1.Rajathi

2.Ammavasai

... Appellants/Claimants

Vs

1.Sugavanam

2.National Insurance Co. Ltd.,

2nd Floor, 81-D, Chetty Street,

Opposite to Bus Stand,

Tiruchengode, Namakkal District. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.02.2019 made in M.C.O.P.No.714 of 2014 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.T.S.Arthanareeswaran

For R2 : Mr.J.Chandran

For R1 : No appearance

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J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 12.02.2019 made in M.C.O.P.No.714 of 2014 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

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2.The appellants herein are the claimants aggrieved against the award of the Tribunal Rs.8,86,800/- as compensation against the claim of Rs.25,00,000/-.

3.The brief facts is as follows:

On 27.01.2014 at about 06.00 p.m. near Mangaliyavas at Labana - Mangaliyavas main road a place which is located at Ajmir District, Rajasthan state, while the deceased Saravannan was riding a motorcycle bearing Reg.No.TN-34-P-3246 keeping his left side of the road, and at that time a lorry bearing Reg.No.TN-34-P-4555 which was driven by its driver in a rash and negligent manner came in the opposite direction and dashed against the said two-wheeler, due to which the deceased sustained multiple grievous injuries all over his body. Immediately after the accident, the deceased was taken to JLNH, Ajmer, where the Doctor declared his death. The said accident occurred only due to rash and negligent manner on the part of the driver of the lorry. The deceased was 27 years at the time of the accident. Due to the sudden death of the said deceased Saravanan, the claimants lost their loving son, so the claimants had suffered very much with physical pain and mental agony due to the death of said Saravanan in the above accident. So the claimants are entitled to claim compensation of Rs.25,00,000/-.

4.The 2nd respondent/Insurance Company denied the mode of accident by stating that the deceased attributed to the accident. The sum claimed by the claimants is excessive. The 1st respondent also denied the accident. The 1st respondent also attributed the negligence only on the part of the deceased. The 2nd respondent also relied on the same version by stating that there is no diligent driving on the part of the deceased and because of his rash and negligent driving the accident occurred. The amount awarded by the Tribunal under different heads are excessive.

5.The Tribunal after analyzing the evidence and documents placed before the same, has given a finding that if the accident occurred due to rash and negligent driving on the part of the driver of the lorry belonging to the Ashok Leyland. While determining the compensation claimed by the claimants the Tribunal has observed that the claimants are parents of the deceased and the deceased was only 27 years at the time of accident. He was earning a sum of Rs.30,000/- per month. These

aspects were considered by the Tribunal by examining witness PW3 and awarded a sum of Rs.8,86,800/- as compensation against the claim of Rs.25,00,000/-.

6. Aggrieved against the said award the claimants have preferred this appeal for enhancement of compensation. In the grounds of appeal, the appellants have contended that the Tribunal has awarded very meager sum as compensation as against the principles laid down by the Hon'ble High Court and Hon'ble Supreme Court. The Tribunal has given a finding that there is negligence on the part of the driver of the said lorry.

7. Heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellants and Mr.J.Chandran, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8. On perusal of the records, it is seen that the finding of the Tribunal by fixing liability on the part of the driver of the lorry is quite appropriate. While determining the loss of income the claimants have furnished Ex.P12/salary certificate and Ex.P13/salary register. To prove the age of the deceased the claimants have furnished Ex.P3/postmortem certificate and Ex.P6/driving license. The appellants have contended that the deceased was working as a Manager in borewell vehicle and was earning a sum of Rs.30,000/- per month. The Tribunal considering the above materials fixed a sum of Rs.6,000/- per month as notional income of the deceased and the same is meagre. Hence, this Court considering the accident is of the year 2014 and the age. The deceased who was 27 years at the time of the accident, inclined to fix a sum of Rs.7,500/- as notional income of the deceased including 40% enhancement towards future prospects. The Tribunal applied multiplier '17' and deducted 50% towards personal expenses which is correct and proper. Accordingly, the amount granted by the Tribunal towards loss of dependency is modified to Rs.10,71,000/- $[(Rs.7,500/- + 3,000 (Rs.7,500 \text{ of } 40\%) \times 12 \times 17 \times 50\%)]$. It is seen that the Tribunal has not awarded any amount towards loss of love & affection and this Court granted a sum of Rs.25,000/- each to the appellants. The amount awarded by the Tribunal towards loss of estate and funeral expenses are confirmed. 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)
1.	Loss of dependency	Rs.8,56,800/-	Rs.10,71,000/-
2.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
3.	Love and affection (Rs.25,000/- each to the appellants)	-	Rs.50,000/-
4.	Loss of estate	Rs.15,000/-	Rs.15,000/-
	Total	Rs.8,86,800/-	Rs.11,51,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,86,800/- is hereby enhanced to Rs.11,51,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

10. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd 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 six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share from the enhanced award amount 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(CS III)

//True Copy//

Sub Assistant Registrar

mtl

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To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

Copy to:

The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate sr.56424

+2cc to Mr.C.Paraneedharan, Advocate sr.55633

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