

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	12.08.2020
Pronounced On	28.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2502 of 2011

(Through Video Conferencing)

1.Nirmal Kumar

2.Bimala Devi

3.Rinku Ranjan Gupta

4.Nitukumari @ Diyakumari Appellants/Petitioners

Vs.

1.S.Ganeshamurthy

2.The Oriental Insurance Company Ltd.,
No.4, Head Quarters Road,
R.V.R.Building, 2nd Floor,
Coimbatore. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award and decree of the Motor Accidents Claims Tribunal cum Principal District Judge's Court at Dharmapuri dated 03.06.2011 in M.C.O.P.No.360 of 2010, in so far as against the disallowed portion of the claim, by enhancing the compensation payable to appellants.

For Appellants : Mr.P.Valliappan

For R2 : Mr.S.Jayaram

J U D G M E N T

Claimants are the appellants in this appeal and are aggrieved by the impugned Judgment and Decree dated 03.06.2011 passed by the Motor Accident Claims Tribunal (Principal District Judge), Dharmapuri, in M.A.C.T.O.P.No.360 of 2010.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.5,15,000/- as compensation together with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, to the appellants/claimants. Aggrieved by the same, this Civil Miscellaneous Appeal has been filed by the claimants for an enhancement of compensation.

3. The claimants are the parents and the siblings of the deceased Pappu Kumar who was aged about 20 years at the time of the death. It is stated that the deceased was doing 3rd year of B.E. Electricals & Electronics Engineering, who met with a motor accident on 28.12.2009 at about 6.15 a.m. near Sapthagiri College under the NH-7 bridge and died.

4. The case of the appellants/claimants is that the deceased was riding a Yamaha Enticer motor cycle bearing registration No.KA-03-EG-5544 when he met with the accident. It is stated that the accident took place due to the negligence of the driver of a insured bus bearing registration No.TN-24-A-3399, who drove the insured vehicle in a rash and negligent manner, knocked down the motor cycle, as a result of which, the deceased was thrown out of from his motorcycle and he suffered severe injuries and later succumbed to the injuries at the spot of the accident. Before the Tribunal, the appellants/claimants had quantified the total compensation for a sum of Rs.57,50,000/- but had restricted the same to Rs.25,00,000/- together with interest at the rate of 12% p.a.

5. The Tribunal has however awarded a sum of Rs.5,15,000/- together with interest at 7.5% by adopting the notional income of the deceased as Rs.4,000/- per month and by applying the multiplier of 13 considering the age of the mother of the deceased which was 46 years at the time of the accident. Therefore, in this appeal, the appellants/claimants have prayed for an enhancement of the compensation by another sum of Rs.10,00,000/- over and above the compensation of Rs.5,15,000/- awarded by the Tribunal.

6. On behalf of the appellant, the learned counsel relied on the following decisions:-

- i. United India Insurance Company Limited Vs. Velumyil and Others, reported in (2013) 2 TNMAC 846.
- ii. National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

7. It was stated that this Court has considered the notional income of a deceased as Rs.15,000/- per month. It is therefore submitted that the compensation awarded by the Tribunal may be partially enhanced as prayed for in this appeal.

8. On the other hand, the learned counsel for the 2nd respondent Insurance Company submits that the impugned Judgment and Decree passed by the Tribunal was well reasoned and requires no interference and therefore, he prayed for dismissal of this appeal.

9. The learned counsel for the 2nd respondent Insurance Company submits that the appellants/claimants have not filed any documents to substantiate that the deceased was capable of earning any amount as he was only a student and therefore, the Tribunal ought to have dismissed the claim petition filed by the appellants/claimants. He further submits that at best the amount awarded by the Tribunal may be confirmed since the Insurance Company has not filed any separate appeal against the impugned Judgment and Decree.

10. I have considered the arguments advanced by the learned counsel for the appellants and the 2nd respondent Insurance Company.

11. It is noticed that the 1st and 2nd appellants are the parents while 3rd and 4th appellants are the siblings of the deceased. The Tribunal was required to award a just compensation under Section 168 of the Motor Vehicles Act, 1988. While awarding the compensation, the Tribunal has to see that the appellants, who were claimants before the Tribunal, are not only legal representatives within the meaning of Section 166 of the Motor Vehicles Act, 1988 but also dependents of the deceased as per the decision of the Courts. The Hon'ble Supreme Court has been awarding compensation based on loss of dependency due to the death of the deceased

12. In this appeal, it is noticed that the deceased was studying in the 3rd year of B.E. Electricals & Electronics Engineering. Compensation to the parents in case of death a child has to be awarded considering the context of Indian family set up and the values associated with. The fact that the deceased had the potential of supporting them in future cannot be ignored merely because the deceased is no more or did not actually earn at the time of accident. The Tribunal are really required to award compensation due to loss of life or injury due to the accident. The income and/or notional income are merely factors which help the Courts/Tribunals to award just compensation. Therefore, I am inclined to consider the notional income of the deceased as Rs.10,000/- in absence of any evidence considering the potential of the deceased at the time of the death. In the case of injury, the Hon'ble Supreme Court in V.Mekala Vs. Malathi and Another, (2014) 11 SCC 178, has considered the notional income of a student as Rs.10,000/- per

month considering the academic background of the injured student.

13. The Tribunal ought to have deducted the personal expenses at $1/2^{\text{nd}}$ instead of $1/4^{\text{th}}$ as the deceased was a bachelor at the time of the accident. Therefore, same is to be deducted at $1/2^{\text{nd}}$. The Tribunal has not awarded the compensation towards the future prospectus of income of the deceased. Therefore, the future prospectus at 40% of the notional income of the deceased, is to be added as per the decision of the Hon'ble in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

14. Therefore, the amount of compensation is to be awarded towards the loss of dependency of the deceased as follows:-

Monthly Income of the deceased	: Rs.10,000/-
Add: Future prospectus 40% (10,000 x 40/100)	: Rs. 4,000/-

	: Rs.14,000/-
Less: Personal Expenses $1/2^{\text{nd}}$	: Rs. 7,000/-

Contribution to the family per month	: Rs. 7,000/-
Annual Income (7,000 x 12)	: Rs.84,000/-
Multiplier - 18 (84000 x 18)	: Rs.15,12,000/-

15. Therefore, the compensation awarded by the Tribunal of Rs.5,15,000/- is re-quantified as follows:-

Heads	Compensation awarded by the Tribunal	Amount of compensation re-quantified by this Court	Status (Enhanced or reduced or granted or deleted or confirmed)
Loss of dependency	Rs.4,68,000/-	Rs.15,12,000/-	Enhanced
Loss of lovable son to A1 and A2 (Parents)	Rs. 20,000/-	*Rs. 80,000/-	Enhanced

Heads	Compensation awarded by the Tribunal	Amount of compensation re-quantified by this Court	Status (Enhanced or reduced or granted or deleted or confirmed)
Loss of lovable brother to A3 and A4 (Siblings)	Rs. 10,000/-	#Rs.50,000/-	Enhanced
Transport Expenses	Rs. 12,000/-	Rs. 15,000/-	Enhanced
Funeral Expenses	Rs. 5,000/-	Rs.15,000/-	Enhanced
Total	Rs.5,15,000/-	Rs.16,72,000/- - rounded off to Rs.16,75,000/-	Enhanced by another sum of Rs.11,60,000/-

* Rs.40,000 x 2 = Rs.80,000/- . # Rs.25,000 x 2 = Rs.50,000/- .

16. The appellants are directed to pay the deficit court fee before this Court on the enhanced amount of compensation within a period of four weeks from the date of receipt of a copy of this Judgment and file the proof of payment of deficit court fee before the Tribunal for withdrawing compensation.

17. Therefore, the 2nd respondent is directed to deposit the enhanced amount of compensation of Rs.11,60,000/- (16,75,000 - 5,15,000) together with interest at 7.5% per annum from the date of claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment.

18. If the 2nd respondent has not deposited the amount of compensation awarded by the Tribunal, it is also directed to deposit the same together with interest and proportionate costs, less any amount already deposited, within the aforesaid period.

19. On the enhanced amount of compensation of Rs.11,60,000/-, the 1st and 2nd appellants, who are the parents of the deceased, is permitted to withdraw a sum of Rs.4,30,000/- each together with interest thereon, by filing suitable application before the Tribunal. Out of the balance, the 3rd and the 4th appellants, who are the siblings of the deceased, is permitted to withdraw a sum of Rs.1,50,000/- each together with interest thereon, by filing suitable applications before the Tribunal.

20. The appellants are also permitted to withdraw their respective share awarded by the Tribunal together with interest thereon and proportionate costs as directed by the Tribunal, less any amount already withdrawn by them, by filing suitable applications before the Tribunal.

21. Accordingly, this Civil Miscellaneous Appeal is allowed.
No cost.

Sd/-
Assistant Registrar

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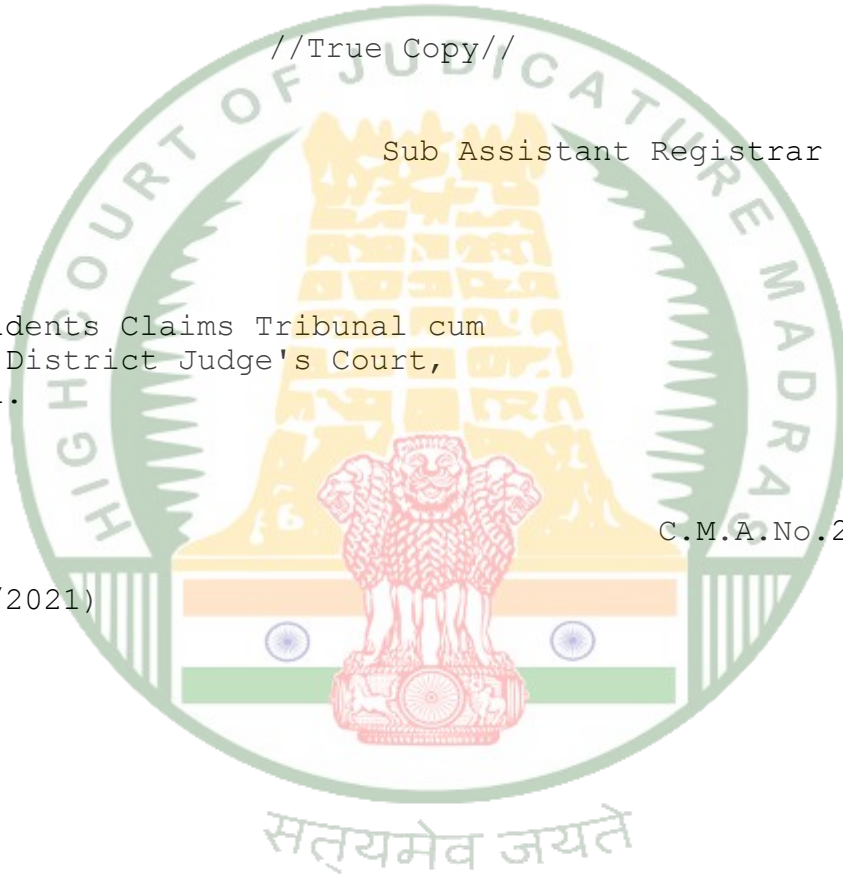
Sub Assistant Registrar

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To:
Motor Accidents Claims Tribunal cum
Principal District Judge's Court,
Dharmapuri.

MG (CO)
RMP (21/01/2021)

C.M.A.No.2502 of 2011



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