



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.10.2020

Pronounced on: 15.10.2020

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Coram::

The Honourable Dr. Justice G. Jayachandran

C.M.A.No.1549 of 2015

1. M.S.Palanisamy,
S/o.Sengoda Gounder.

2. Vijayalakshmi,
W/o.M.S.Palanisamy.

...Appellants/Claimants

/versus/

1. S.Parthiban,
2. M/s.Suguna Poultry Products Ltd.,
No.25, Nehru Street Extension,
Udumalpet.

3. The Oriental Insurance Co.Ltd.,
R.K.V.Buildings, 1st Floor,
No.54, Dhali Road,
Udumalpet - 642 126.

... Respondents/Respondents

(R1 Driver of Mini Lorry,
he remained Exparte before the Tribunal)
Hence notice to R1 may be dispensed with)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award of the Principal District Court, Erode in M.C.O.P.No.752 of 2002 dated 09.01.2009.

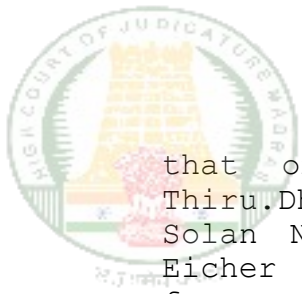
For Appellant : Mr.S.Kaithamalai Kumaran
For R2 : Mr.J.Ramakrishnan,
for Mr.N.S.Siva Kumar
For R3 : Mr.K.Vinod,
for Mrs.Elveera Ravindran
For R1 : ex parte

JUDGMENT

(The case has been heard through video conference)

This Appeal is filed by the claimants before the Motor Accident Claims Tribunal, Erode, seeking enhancement of compensation for the death of Thiru.P.Dhansekar.

2. The case of the claimants before the Tribunal was



that on 07.12.2001 at around 10.00 P.M, when their son Thiru.Dhansekar along with his friends were standing on the Solan Nagar main road near Ramalingam Agency Petrol Bunk, a Eicher Mini Lorry bearing registration No.TN-41-K-4605, came from west to east with high speed rash and negligently hit Thiru.P.Dhansekar, and he was thrown away. He sustained injury on his head and body. When Thiru.P.Dhansekar was taken to the hospital, he was declared died. A case was registered against the driver of the Eicher lorry. At the time of accident, the deceased was working as Computer Software Executive, earning a sum of Rs.7,500/- per month. Therefore, for the loss of their son, who was aged 25 years, at the time of accident, petition claiming a sum of Rs.20,00,000/- as compensation filed.

2. The 3rd respondent/Insurance Company contested the claim petition on the ground that the Eicher Mini Lorry was driven by the driver who had no valid driving license. The accident was not due to rash and negligently driving of the Eicher van driver. The income and age of the deceased and dependants of the claimants are denied. Further, it was contended that after filing the claim petition, the claimants allowed the petition to be dismissed for default on 11.11.2003 and same was restored on condition that the claimants should be present on 28.07.2004 and adduce evidence. Since, the claimants failed to adduce evidence on the day fixed, their application for restoration was dismissed. Later, the claim petition was restored on file by order of the Hon'ble High Court dated 11.06.2007 but the case bundle was missing and got reconstructed only in the year 2008. Therefore, any award passed in favour of the claimants should not carry interest from 12.11.2003 to 23.06.2008.

3. The Tribunal, after considering these facts and the evidence let in by the claimant, awarded a sum of Rs.1,83,000/- as compensation with 7.5% interest excluding the period between 11.11.2003 to 09.07.2007 and 21.07.2008 to 06.11.2008. The award amount was apportioned between the father and mother for the claimants at the ratio 30:70.

4. This Second Appeal is filed on the ground that the earning capacity of the claimant not been properly considered by the Tribunal. Particularly, Ex.P.8 Salary Certificate was disbelieved by the Tribunal for no reason. The deceased had a valid passport and his future prospects was so bright. But, the Tribunal has not considered the future prospects of the deceased.

5. Pointing out the error in fixing the multiplier 7, for 25 years old deceased, the Learned Counsel appearing for the appellant would submit that the award of compensation should be enhanced by fixing a sum of Rs.7,500/- as monthly income with 40% future prospects.



6. The Learned Counsel appearing for the Insurance Company would submit that the accident occurred on 07.12.2001. The claimant allowed the petition to be dismissed and got it restored after long time. No acceptable evidence was placed before the Tribunal to prove the qualification of the deceased and his earning capacity. The Salary Certificate (Ex.P.8) given by a private concern by name M/s.NRS Net Trichy, is not a reliable document to prove the income of the claimant.

7. Regarding the fixation of multiplier, the Learned Counsel for the Insurance Company would submit that, at the time of deciding the claim, the rule prevailing was to take the average age of the dependants to fix multiplier in case of deceased bachelor. Accordingly, multiplier 7 was adopted. Only in the later case, the Hon'ble Supreme Court directed that the age of deceased should be taken for selecting the multiplier. Therefore, the counsel fairly conceded that in this case multiplier 18 has to be applied instead of 7.

8. Considering the rival submission, this Court taking note of the fact that the deceased had a passport (Ex.P.11) and salary certificate (Ex.P.8) filed to show that the deceased had every potential to earn in future. The salary certificate (Ex.P.8) relied by the claimant indicates that the deceased was working as Software Executive from August 2001 and the salary inclusive of all was Rs.7,500/-. The salary certificate marked as Ex.P.8 has been spoken by P.W.2, who claims to be the authorised person to depose on behalf of M/s.NPS Net. PW.2 is the person who was also present with the deceased at the time of accident. In the chief examination, P.W.2 has deposed that deceased was working as Computer Operator. He admits that, there is an attendance register and salary register in their concern firm. Those documents were not produced. He claims that the deceased had a Diploma, a fact which was not even spoken by their parents and no evidence placed before the Court to substantiate the claim.

9. On considering and appreciating the evidence regarding the earning capacity of the deceased, this Court is of the view that the Tribunal ought to have fixed the notional income of the deceased at Rs.4,000/- and added with 40% towards future prospects and applied multiplier '18', after deducting $1/2^{rd}$ for the personal expenditure of the deceased. Accordingly, the award of the Tribunal is modified as under:-

Compensation under following heads	Award passed by the Tribunal	Award passed by this Court
Loss of income (Rs.4,000 + 40% FP) x $1/2$ x 18 x 12	Rs.1,68,000/-	Rs.6,04,800/-



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Compensation under following heads	Award passed by the Tribunal	Award passed by this Court
Loss of Love and Affection	Rs.7,500/-	---
Loss of Parental consortium	---	Rs.40,000/-
Funeral Expenses	Rs.7,500/-	Rs.15,000/-
Loss of Estate	---	Rs.15,000/-
Total	Rs.1,83,000/-	Rs.6,74,800/-

10. The award of Rs.1,83,000/- passed by the Tribunal is enhanced to Rs.6,74,800/-. The said award amount is equally apportioned by the appellants. The Insurance Company is directed to deposit the award amount with 7.5% interest excluding the period between 11.11.2003 to 09.07.2007 and 21.07.2008 to 06.11.2008, from the date (03.07.2002) of filing the petition, till the date of realisation, within a period of 12 weeks, from the date of receipt of a copy of this order. On such deposit, the Appellants herein are directed to withdrawn the amount on filing proper application.

11. Accordingly, the Civil Miscellaneous Appeal is Allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

To

1.The Principal District Court,
Erode.

Copy To

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

C.M.A.No.1549 of 2015

JP (CO)
GN (19/07/2021)