

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No. 1577 of 2020

1. Vasuki
W/o. Late Murugesan
2. Minor Sathishkumar
S/o. Late Murugesan
3. Minor Priyanka,
D/o. Late Murugesan
4. Mariyayee
W/o. Perumal
5. Perumal
S/o. Muthan

The 2nd and 3rd minor petitioners are
rep. By their next friend / guardian /
mother Vasuki

All are residing at
D.No.4/145, Arunthathiyar Street,
T.M.Kaliyannan Street,
Anangoor Post,
Tiruchengode Taluk,
Namakkal District - 637 304.

... Appellants/Petitioners

Vs.

1. Sakthivel,
S/o. Nallusamy,
D.No.21, New Street,
Ganesapuram,
Namakkal District.
2. Ganesan,
S/o. Karuppannan
D.No.47A, Kuppannan Street,
R.P.Pudur,
Namakkal - 637 001.

3. The National Insurance
Company Limited,
74A, Paramathi Road,
Namakkal - 637 001.

4. The National Insurance Co. Ltd.,
Parimalam Complex,
2nd Floor, EVN Road,
Erode - 638 011.

..Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the judgment and decree in M.C.O.P. No.639 of 2018, dated 04.02.2020 on the file of the Motor Accident Claims Tribunal/Special District Judge Court, Erode.

For Appellants : Mr.T.S. Arthanareeswaran

For Respondents : R1 & 2 - no appearance
Mr.J.Chandran for R3

J U D G M E N T

The claimants, not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal/Special District Judge, Erode in MCOP No.639 of 2018, have filed the present Civil Miscellaneous Appeal before this Court.

2. This is a case of fatal accident and deceased is the husband of 1st appellant and father of 2nd and 3rd claimants and son of 4th and 5th appellants. According to the appellants/claimants, on 31.12.2017 at about 12.15 p.m. when the deceased was riding a two wheeler along Tiruchengode-Veppadai road, near Anangur, a lorry owned by the 2nd respondent, which was insured with the 2nd respondent, driven by its driver came in rash and negligent manner and dashed against the deceased, he suffered fatal injuries and died on the spot. At the time of accident, the deceased was 47 years old, he was an agricultural coolie, earning a sum of Rs.17,000/- and he was the sole breadwinner of the family and the entire family depends upon him. Hence, claiming compensation of Rs.10 lakhs, the claim petition has been filed by the appellants/claimants.

3. The 1st and 2nd respondents remained exparte and the 3rd and 4th respondents Insurance Company contested the claim petition on the ground that only due to the rash and negligent driving of the deceased, the accident was taken place. Hence, the Insurance company is not liable to pay compensation. That apart, the compensation claimed by the appellants is highly

excessive and also disputed the monthly income of deceased. The accident was taken place at Namakkal and the claimants are also residing at Namakkal, they cannot maintain a claim petition before the Motor Accident Claims Tribunal at Erode.

4. In order to prove their claim, the Appellants/claimants examined the 1st appellant as P.W.1 and eye-witnesses were examined as P.W.2 and P.W.3 and marked as many as 16 exhibits. On the side of the respondents, no witness was examined and no document was marked.

5. The Tribunal, after considering the materials available on record, has come to a conclusion that the accident has been taken place due to rash and negligent driving of the driver of the lorry, and the claimants can maintain the claim petition at Erode. So far as the quantum of compensation is concerned, the Tribunal had fixed the monthly income of the deceased as Rs.6000/- and adding 25% towards future prospects, notional monthly income of deceased was fixed as Rs.7500/-, after deducting 1/4th towards personal expenses and applying multiplier of 13, the Tribunal has arrived the loss of dependency as Rs.8,77,500/-. So far as other heads are concerned, the Tribunal has awarded the compensation as follows :-

(1)	Loss of income	Rs. 8,77,500/-
(2)	Funeral expenses	Rs. 15,000/-
(3)	Damages to clothes	Rs. 15,000/-
(4)	Loss of consortium	Rs. 40,000/-
(5)	Loss of love and affection	Rs. 1,00,000/-
	Total	Rs.10,47,500/-

The Tribunal had also held that 2nd and 3rd respondents being owner and insurer of the vehicle and they are liable to pay compensation. Not being satisfied with the same, the claimants have filed this Civil Miscellaneous Appeal before this Court.

6. The learned counsel appearing for appellants would contend that as the deceased was an agricultural coolie, earning a sum of Rs.17,000/- per month and the accident was taken place in the year 2017, the Tribunal has only fixed the monthly income including 25% of future prospects, as Rs.7,500/- without any basis. Towards love and affection, the Tribunal has only granted a sum of Rs.1,00,000/- Hence, claiming enhancement of compensation, the appellants have filed this appeal.

7. Per contra, the learned counsel appearing for insurance company has contested the claim petition stating that, the deceased was an agricultural coolie, but there is no proof for

the monthly income. Hence, the Tribunal has rightly fixed the monthly income as Rs.7500/- and on the other heads also, the Tribunal has rightly granted adequate compensation and there is no reason to interfere with it.

8. I have considered rival submissions of learned counsel appearing for appellants as well as learned counsel appearing for respondents Insurance Company and perused the materials available on records.

9. Admittedly, the deceased was an agricultural coolie and he was aged 47 years at the time of accident. Even though the claimants have contended that the monthly income of deceased was Rs.17,000/-, there is no proof for the same. However, considering the fact that an agricultural coolie would get a sum of Rs.400/- per day, and even assuming, working for 20 days per month, he can easily earn a sum of Rs.8000/- per month, but the Tribunal has fixed the monthly income as Rs.6000/- without any basis whatsoever. As the deceased was 47 years, 25% of notional monthly income can be added towards future prospects, which comes to Rs.2,000/- and after deducting 1/4th towards his personal expenses, the monthly income comes to Rs.7500/- and applying multiplier of 12, the loss of dependency comes to Rs.11,70,000/-. So far as loss of love and affection is concerned, a sum of Rs.1,60,000/- can be awarded instead of Rs.1,00,000/- awarded by the Tribunal. In respect of other heads are concerned, the Tribunal has rightly awarded compensation and there is no reason to interfere with the same. In the said circumstances, the award passed by the Tribunal is modified as follows :-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Loss of income	8,77,500	11,70,000	enhanced
2	Funeral expenses	15,000	15,000	confirmed
3	Damages to clothes	15,000	15,000	confirmed
4	Loss of consortium	40,000	40,000	confirmed
5	Loss of love and affection	1,00,000	1,60,000	enhanced
	Total	10,47,500	14,00,000	enhanced

Thus, the appellants are entitled to get a sum of Rs.14,00,000/-

as compensation instead of Rs.10,47,500/- awarded by the Tribunal.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,47,500/- is hereby enhanced to Rs.14,00,000/- 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, if any, on the enhanced compensation. The 3rd 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 of the enhanced compensation amount, now determined by this Court, the appellants are entitled to share the amount proportionately as granted by the Tribunal and they are permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpp

To

The Motor Accidents Claims Tribunal,
Special District Judge, Erode.

Copy To:

The Section Officer
V R Section, High Court Madras.

+1 cc to Mr.Chandran, Advocate Sr.No. 36019

+2ccs to Mr.Arthanareeswaran, Advocate, Sr.No. 36123

MG(CO)

RMP(10/06/2021)

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