



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.3285 of 2019

1. Veerammal
2. Kumar
3. Rajamani
4. Santhi

.. Appellants / Petitioners

Vs.

1. Viswanathan
2. M/s.United India Insurance Company Ltd.,  
No.2, Dr.Sankaran Road,  
Namakkal.

.. Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 25.02.2019, made in M.C.O.P.No.737 of 2016, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Namakkal.

For Appellants : Mr.C.Thangaraju

For Respondent 1 : No appearance

For Respondent 2 : Mr.S.Arunkumar

#### J U D G M E N T

Not feeling satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, the appellants/claimants are before this Court with this appeal seeking enhancement of compensation.

2. This is a case of fatal accident. The appellants/claimants are wife, major son and daughters of the deceased. According to the appellants / claimants, on 30.01.2016, at about 03.00 p.m, the deceased was riding a moped in Namakkal-Trichy road. At that time, the tractor belonging to the first respondent which has been insured with the second respondent insurance company was parked in the middle of the road and unable to overtake the tractor the deceased dashed against the tractor and sustained injuries, later succumbed to the injuries. At the time of the accident, the deceased was 58



years old and he was an agricultural coolie earning a sum of Rs.10,000/- per month. As he was the sole breadwinner, the claim petition has been filed by the appellants / claimants seeking compensation of Rs.10,00,000/-.

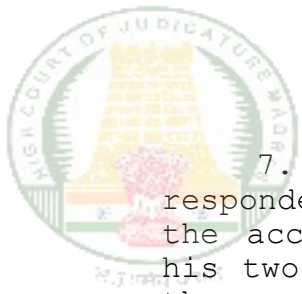
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3. The first respondent owner of the vehicle remained ex parte and the second respondent / insurance company contested the claim petition stating that the accident took place due to the negligent driving of the deceased as he dashed against a parked vehicle and hence the negligence cannot be fixed on the first respondent tractor driver. That apart, the monthly income of the deceased was also disputed by the second respondent / insurance company.

4. In order to prove the case, the appellants / claimants examined two witnesses and marked as many as 14 documents as Exs.P1 to P14. On the side of the second respondent/insurance company one witnesses was examined and one document was marked as Ex.R1.

5. After considering the materials available on record, the Tribunal came to the conclusion that the accident had taken place due to contributory negligence and fixed 90% on the part of the driver of the tractor and 10% on the deceased. So far as the quantum of compensation is concerned, the Tribunal as fixed the notional monthly income of the deceased at Rs.6,500/- and as on the date of accident he was aged 58 years, added 10% towards future prospects arrived at a monthly notional income of Rs.7,150/-. After deducting 1/4 towards his personal expenses, arrived at a sum of Rs.5,79,204/- towards loss of dependency. Further, towards loss of estate a sum of Rs.15,000/- was awarded; towards funeral expenses a sum of Rs.15,000/- was awarded; and towards loss of consortium a sum of Rs.40,000/- was awarded to the first appellant. Thus, the Tribunal awarded a sum of Rs.6,49,204/- as total compensation. Being aggrieved with the compensation awarded by the Tribunal as inadequate, the appellants / claimants filed the present appeal seeking enhancement.

6. Mr.C.Thangaraju, learned counsel appearing for the appellants/claimants would contend that the Tribunal has totally erred in fixing the contributory negligence on the part of the deceased without any evidence whatsoever. So far as the quantum of compensation is concerned, the deceased being a agricultural coolie, was earning a sum of Rs.10,000/- per month. However, the Tribunal has fixed the notional monthly income only at Rs.6,500/- and so far as loss of love and affection nothing was awarded to the claimants. Hence, he seeks enhancement of compensation.

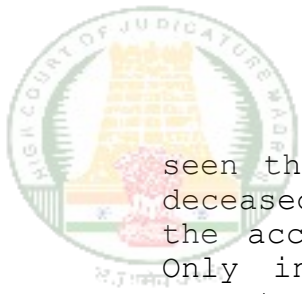


7. Per contra, the learned counsel appearing for the second respondent / insurance company would contend that on the date of the accident, the deceased was 58 years and he himself dashed his two wheeler against the tractor, which has been parked on the road side with all precautions. Hence, the accident took place due to the negligence of the deceased, however the Tribunal has fixed only 10% negligence on the part of the deceased. So far as the quantum of compensation is concerned, though the appellants / claimants contended that he was an agricultural coolie and was earning a sum of Rs.10,000/- per month, absolutely there is no evidence. Considering the same, the Tribunal fixed the monthly income at Rs.6,500/- and after applying the principles laid down by the Hon'ble Supreme Court in Sarla Verma Vs. Delhi Transport Corporation reported in (2009) 6 SCC 121 and National Insurance Company Limited vs. Pranay Sethi and Ors reported in (2017) 16 SCC 680 the Tribunal awarded a sum of Rs.6,49,204/- which is a just and fair compensation and therefore there is no reason to interfere with the same.

8. I have considered the rival submissions and also perused the records carefully.

9. So far as negligence is concerned, admittedly, the deceased was 58 years old on the date of accident and while he was riding a two wheeler he dashed against a tractor parked on the road, hence, the Tribunal fixed 10% negligence on the part of the deceased and 90% on the part of the tractor. Considering the materials on record, I find no illegality in the said finding of the Tribunal.

10. So far as the quantum of compensation is concerned, though it is stated that the deceased was an agricultural coolie and he was earning a sum of Rs.10,000/- per month, absolutely there is no evidence for the same. After considering the other circumstances and also the age of the deceased, the Tribunal fixed the monthly income as Rs.6,500/-. In such circumstances, without any other supporting evidence to show the monthly income, this Court is of the view that the Tribunal has correctly fixed the monthly income of the deceased as Rs.6,500/- and I find no reason to interfere with the same. So far as future prospectus is concerned, the Tribunal has added 10% of monthly income and also deducted 1/4 towards his personal expenses, which is directly in concurrences with the principles laid down by the Hon'ble Supreme Court in Pranay Sethi case (cited supra). So far as the loss of consortium is concerned, the Tribunal has awarded a sum of Rs.40,000/-. Now it is contended that so far as the other claimants namely the son and daughters of the deceased, no amount has been granted towards love and affection. From the perusal of the records, it could be



seen that all the claimants are major son and daughters of the deceased and there is no evidence to show that at the time of the accident they were all living together with the deceased. Only in such circumstances, the Tribunal did not grant any amount towards love and affection to the son and daughters of the deceased and I find no illegality in the same.

11. In view of the above, I do not find any error or illegality in the order passed by the Tribunal warranting interference. Further, there is no merit in the appeal and the appeal is liable to be dismissed and accordingly dismissed. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,  
Motor Accident Claims Tribunal,  
Namakkal.
2. The Section Officer,  
VR Section, High Court, Madras.

+lcc to Mr.S.Arunkumar, Advocate, S.R.No.35726

C.M.A.No.3285 of 2019

KK(CO)  
SB(11/08/2021)