

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

C.M.A.No.432 of 2017

1.Dhanabakkiyam
2.Minor. Rubankumar
(Rep. by his mother Dhanabakkiyam)
3.Meenashi .. Appellants/Claimants

Vs.

1.C.Pandiyan
2.V.Sankar
3.Reliance General Insurance Company Ltd.,
Rep. by its General Manager,
Having Branch Office at
Door No.408, 3rd Floor,
Perundurai Road,
Erode Taluk & District. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.09.2016 made in M.C.O.P.No.210 of 2015 on the file of Motor Accident Claims Tribunal, Special District Court, Erode.

For Appellants : Mr.S.Kaithamalaikumaran
For R3 : Mr.S.Arunkumar
: No appearance for R1 & R2

J U D G M E N T

The Civil Miscellaneous Appeal has been filed for enhancement of the compensation awarded by the Tribunal in the award dated 28.09.2016 made in M.C.O.P.No.210 of 2015 on the file of Motor Accident Claims Tribunal, Special District Court, Erode.

2.The brief facts of the case are as follows:

On 20.09.2014, at about 8.45 p.m., the deceased Shanmugasundaram was riding his motorcycle, bearing Registration No.TN 33 AJ 5020 at Sanarmedu on the Erode to Modakkurichi Main Road. When he reached near Kumar Garden Pirivu Road, another motorcycle, bearing Registration No.TN33 BD 8820, belonging to the 2nd respondent, insured with the 3rd respondent -Insurance Company, came in a rash and negligent manner and hit the

deceased's motorcycle. Due to the said impact, the deceased Shanmugasundaram sustained fatal injuries and died on the way to the hospital. Stating that the accident had occurred only due to the carelessness and negligence on the part of the motorcycle, bearing Registration No.TN 33 BD 8820, the wife, son and mother of the deceased filed a claim petition seeking compensation of Rs.25,00,000/- before the Tribunal. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to the rash and negligent riding of the rider of the motorcycle, bearing Registration No.TN 33 BD 8820 and directed the 3rd respondent/Insurance Company being insurer of the said motorcycle, to pay a sum of Rs.8,73,312/- as compensation to the appellants.

3. Not being satisfied with the compensation awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

4. The learned counsel appearing for the appellants/claimants has contended that the compensation of Rs.8,73,312/- awarded by the Tribunal, is meagre. Even though it was claimed that the deceased was doing business and was earning a sum of Rs.50,000/- per month, the Tribunal has fixed a meagre sum of Rs.7,000/- as monthly income of the deceased. The amounts awarded by the Tribunal under different heads are also meagre, according to the learned counsel for the appellants.

5. Per contra, the learned counsel appearing for the 3rd respondent/Insurance Company has contended that the Tribunal, after considering the materials and evidence in proper perspective, has rightly awarded the compensation, which is just, fair and reasonable. The appellants have not made out any case for enhancement of compensation, according to the learned counsel for the third respondent Insurance Company.

6. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent/Insurance Company and perused the materials available on record carefully and meticulously.

7. The appellants have contended in the claim petition that the deceased was aged 52 years and was doing business under the name and style of Shri Ananthaa Surgicals and was earning a sum of Rs.50,000/- per month. To substantiate the said contention, Ex.P8-Income Tax Return for the assessment year of 2011-2012 and an Acknowledgment by the Income Tax Department for the assessment year of 2010-2011 and Ex.P10-Form D certificate of Registration for Shri Ananthaa Surgicals, Erode issued by the Commercial Tax Officer, Erode, have been produced. The deceased died on 20.09.2014. The appellants have failed to produce the

Income Tax Returns for the assessment year 2013 - 2014. In the circumstances, the Tribunal has fixed a sum of Rs.7,000/- as the monthly income of the deceased, notionally and thereafter, added 15% of the amount towards future prospects, deducted 1/3rd of the amount towards personal expenses of the deceased, adopted the multiplier of 11 and has arrived at the loss of dependency at Rs.7,08,312/-. Taking note of the materials and evidence and the facts and circumstances, this Court deems it fit to enhance the monthly income of the deceased to Rs.8,000/-. If that is done, the loss of dependency works out to Rs.8,09,600/- and it is awarded accordingly. The amounts awarded by the Tribunal towards other heads are reasonable and hence the same are confirmed.

8.The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Loss of income	8,09,600/-
Loss of consortium	1,00,000/-
Funeral Expenditure	25,000/-
Transportation	10,000/-
Loss of love & affection	30,000/-

TOTAL...	9,74,600/-
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Thus, the claimants are entitled to the modified compensation of Rs.9,74,600/- with interest at the rate of 7.5% per annum from the date of petition.

9.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The 3rd respondent Insurance Company is directed to deposit the modified amount of compensation now determined by this Court, with interest and costs, after deducting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment.

10.The accident took place in the year 2014. The second appellant was minor at that time. Now he would have attained majority. Hence, on such deposits being made, all the claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Special District Judge,
The Motor Accident Claims Tribunal
Erode.

2.The Section Officer
V.R.Section
High Court, Chennai.

+lcc to Mr.S.Kaithamalaikumaran, Advocate, S.R.No. 32101
+lcc to Mr.S.ArunKumar, Advocate, S.R.No. 32368

C.M.A.No.432 of 2017

KJ(CO)
GN(12/05/2021)