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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A.No.3576 of 2011

1. Annapoorani
2. Madhavan @ Madhan ...Appellants / Claimants

Vs.

1.S.Selvakumar
2.B.Velarmathi
3.The New India Assurance Company Ltd.,
Branch Office, Amman Complex,
1360, E.V.N. Road, Erode ...Respondents / Respondents

(Respondents 1 & 2 are
formal parties, hence given up)

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.08.2011, made in M.C.O.P. No.408 of 2010, on the file of the Additional District Judge, FTC-I, Motor Accidents Claims Tribunal, Erode

For Appellant : Ms.Indumathi for
Mr.V.S.Kesavan

For Respondents : Mrs.C.Sangamithirai-R3

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the Tribunal in award dated 05.08.2011, made in M.C.O.P. No.408 of 2010, on the file of the Additional District Judge, FTC-I, Erode.

2.The appellants herein are the claimant initially filed M.C.O.P. No.408 of 2010, on the file of the Additional District Judge, FTC-I, Erode, claiming a sum of Rs.5,00,000/- as



compensation for the death of their son namely Murugesan in the accident that took place on 01.11.2008 at about 10.30 p.m.

3. According to the claimants/appellants herein, on 07.06.2010 at about 8.20 A.M when the deceased student Murugesan who was studying 9th standard was going to C.S.I School in his bicycle in Sathya Road, opposite Park Palace Hotel from West to East near Centre Media, the first respondent drove his Lorry bearing Reg.No. TN-29-X-3377 in a rash and negligent manner from the back of the deceased and hit against him causing grievous injuries in his left thigh and right thigh, left cheek and in the left abdomen. He was admitted immediately in Government Hospital at Erode, where he declared died at 10.00 a.m. The accident had taken place only because of the rash and negligent act of the 1st respondent driver. Hence, the claimants filed claim petition, claiming compensation for a sum of Rs.5,00,000/-.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent/driver of the Lorry bearing Reg.No. TN-29-X-3377 belonging to the 2nd respondent and directed the 3rd respondent being insurer of the offending vehicle to pay a sum of Rs.1,90,000/- along with interest @ 7.5% per annum as compensation to the appellant.

5. Not being satisfied with the amounts awarded by the Tribunal in the award dated 05.08.2011, made in M.C.O.P. No.408 of 2010, the claimants have come out with the present appeal.

6. The learned counsel appearing for the appellants contended that the deceased was studying in 9th standard, he is only son to his parents. The claimants expected their son would be a Civil Engineer, they have lost his love, affection and his future monetary and moral support. The learned counsel for the appellants further submitted that the the tribunal has granted compensation at Rs.1,90,000/- against the claim of Rs.5,00,000/- without considering the evidence and documents in prospective manner. The tribunal has also erred in not awarding any amount to the claimants towards future prospects because of the loss of their son and sum awarded by the tribunal under other heads are also not proper and requires enhancement.

7. On the other hand, the learned counsel appearing for the 3rd respondent insurance company submitted that the deceased student suddenly crossed the road and hit against the lorry and he was careless in riding his bicycle and in any event the accident was due to the contributory negligence of the minor deceased. The learned counsel has further submitted that since



the deceased Murugesan was a minor and aged 14 years, therefore, the claimants can only claim the sum of Rs.50,000/- being the statutory compensation under 'No Fault Clause'. But the tribunal has awarded compensation by applying multiplier method. The learned counsel further submitted that even though the compensation awarded by the tribunal is excessive, the same may be confirmed in view of the age of the deceased. In any event, claiming enhancement of compensation cannot be accepted. The appeal is liable to be dismissed.

8. Heard learned counsel appearing for the appellant as well as the 3rd respondent-Insurance Company and perused the materials available on record.

9. On the basis of the factual and rival contentions urged by the learned counsels appearing for the parties concerned, the following points needs to be answered;

- 1) whether the the tribunal erred in not following the ratio as per the principles of law laid down by the Hon'ble Apex Court in deciding compensation on the death of children below 15 years.
- 2) Whether the appellants are entitled for enhancement of compensation, if so what amount ?

10. On perusal of documents, it is not in dispute that the deceased was a student studying 9th standard, aged 14 years and died due to the accident. Further there is no dispute with regard to the existence of coverage of the insurance policy with the 3rd respondent/Insurance Company at the time of the accident. Though the learned counsel appearing for the insurance company raised his arguments regarding contributory negligence by the deceased Murugesan, no contra evidence has been placed before the tribunal or this Court to disprove the rash and negligence driving by the driver of the lorry. Ex.P4/Motor Inspector's Report confirms the said information. Therefore, this Court confirms the negligence on the part of the driver of the lorry, accordingly, the appellant insurance company, being insurer of the offending vehicle, is liable to pay compensation.

11. As regards the compensation awarded by the tribunal is concerned, the tribunal considering the age of the deceased who is 14 years at the time of the accident, fixed the notional income at Rs.15,000/- per annum according to the Schedule 2 of the MV Act and deducted 1/3 towards personal expenses and applied multiplier 15 by taking age of the parents, which arrived at Rs. 1,50,000/- towards of loss of income of the deceased. Further a sum of Rs.30,000/- under the head 'Loss of Love and Affection, and a sum of Rs.5,000/- each under the heads 'Transport expenses and Funeral Expenses' was awarded by the



12. A forceful submission has been made by the learned counsel appearing for the appellants/claimants that the tribunal erred in not following the ratio fixed by the Hon'ble Supreme Court in deciding cases involving death of children below 15 years. The further contention of the appellant is that the tribunal did not consider any amount for non-pecuniary loss and awarded very less amount towards pecuniary loss to the claimants.

14. In the case of Kishan Gopal and Another and Lala & Others in Civil Appeal No.7137 f 2013, the Hon'ble Supreme Court held as follows;

<https://hcservices.ecourts.gov.in/hcservices/>



conventional heads towards loss of love and affection, funeral expenses, last rites arrived at Rs. 1,50,000/- towards of loss of income of the deceased."

15. Applying the principles laid down by the Hon'ble Supreme Court in the case referred to supra, this Court is inclined to enhance the award amount to the claimants. Considering the fact that the deceased boy, who was aged 14 years at the time of the accident, had he been alive, would have certainly contributed substantially to the family of the appellants by working hard. Therefore, by following the principles laid down by the Hon'ble Supreme Court in the judgment cited supra, it would be reasonable to fix the notional income at Rs. 20,000/- and by applying multiplier 15, the loss of income of the deceased is calculated at Rs. 3,00,000/-

16. Further, the tribunal has awarded a sum of Rs. 30,000/- towards 'Loss of Love and Affection. Though the love and affection of the parents cannot be measured and portrayed in a clear terms of money, it is just proper to award a sum of Rs. 50,000/- (Rs. 25,000/- each to the appellants). The sum of Rs. 5,000/- awarded by the tribunal for Funeral Expenses is enhanced to Rs. 10,000/-. This Court confirms the compensation of Rs. 5,000/- granted by the tribunal under the head 'Transport Expenses'. It is seen the tribunal has not considered to award compensation under the head 'Loss of Estate', hence a sum of Rs. 15,000/- is granted under the head.

17. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Compensation awarded by Tribunal (Rs)	Compensation modified by this Court (Rs)
1.	Loss of Income	1,50,000	3,00,000
2.	Loss of Love and Affection	30,000	50,000 (Rs. 25,000/- each to the claimants)
3.	Transport Expenses	5,000	5,000
4.	Funeral Expenses	5,000	10,000
5.	Loss of Estate	...	15,000
	Total	1,90,000/-	3,80,000

18. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs. 1,90,000/- is enhanced to



Rs.3,80,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

19. 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, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw the enhanced award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, for the enhanced amount. The apportionment shall be as fixed by the tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
FTC-I, Motor Accident Claims Tribunal,
Erode.

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

+1cc to Mr.V.S.Kesavan, Advocate, S.R.No.7744

+1cc to M/s.C.Sangamithirai, Advocate, S.R.No.7247

C.M.A.No.3576 of 2011

SR(CO)
RVM(12/11/2021)