



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.07.2021

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A. No.1442 of 2021

1. Rathinam
2. Kannammal
3. Balamurugan ..Appellants/Petitioners

Versus

1. Venkatachalam
2. The Manager,
ICICI Lambard General Insurance Co. Ltd.,
I Floor, S.P.Tower,
Ramesh Theatre Opp.
Trichy Road, Namakkal 637001.
3. Jothi ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 19.09.2019 in MCOP No.573 of 2017 on the file of Motor Accidents Claims Tribunal/Principal District Court, Namakkal.

For Appellant : Mr.Thangaraju

For Respondents
for R2 : Mr.R.Srividhya

J U D G M E N T

The appeal is heard through video conferencing.

2. Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal/Principal District Court, Namakkal, in MCOP No.573 of 2017, dated 19.09.2019, the present appeal has been filed by the claimants for enhancement of the compensation amount.



3. The appellants/claimants and third respondent are the wife and children of the deceased Natesan. It is the case of the appellants/claimants that on 14.02.2017 at about 11.00 am, one Sekar drove a Hero Honda Motor Cycle bearing Registration No.TN-28-AP-8415 with the deceased Natesan as a pillion rider, on the left side of Mohanur Road in Namakkal Town from South to North Direction. When they were nearing N.S.Service Station, a TATA Ace vehicle bearing Registration No.TN-28-BY-1652, belonging to the first respondent and insured with the second respondent, came in a rash and negligent manner being driven by its driver from the opposite direction and dashed against the Motor Cycle. Due to the impact, the deceased Natesan sustained multiple fractures and grievous fatal injuries in his head, right leg and all over his body. Immediately, he was taken to the Government Hospital, Namakkal, but he died on the way to the Hospital.

4. It is the further case of the claimants that the deceased was doing Mason work and earning Rs.25,000/- per month. The deceased is the sole breadwinner of the family and due to the sudden demise, the claimants are suffering for their livelihood. Hence, they filed the claim petition for a sum of Rs.30,00,000/- as compensation.

5. The said claim petition was resisted by the second respondent/Insurance Company by filing a detailed counter statement denying the manner of the accident as projected by the claimants in the claim petition. They also denied the age, occupation and income of the deceased mentioned in the claim petition. Thus, they sought for dismissal of the claim petition.

6. The learned counsel for the third respondent, who is the daughter of the deceased, made his submissions supporting the case of the claimants.

7. In order to prove the claim, the first claimant/wife of the deceased examined herself as PW1, besides examining one Yuvaraj as PW2, an eye-witness to the accident and Exhibits P1 to P10 were marked. On the side of the Insurance Company, neither any oral nor any documentary evidence was adduced.

8. The Tribunal after analysing the entire evidence came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent's vehicle bearing Registration No.TN-28-BY-1652. By coming to such conclusion, the Tribunal passed an award for a sum of Rs.9,47,500/- and directed the second respondent/Insurance Company to pay the above compensation. The



break-up details of the amounts awarded by the Tribunal under various heads are as follows:

S.No.	Heads under which amounts are awarded by the Tribunal	Amount in Rs.
1.	Loss of Income	7,02,000
2.	Future Prospects for 25%	1,75,500
3.	Loss of Estate	15,000
4.	Funeral Expenses	15,000
5.	Loss of Consortium	40,000
	Total	9,47,500

9. It is the contention of the learned counsel for the appellants/claimants that the deceased Natesan was working as a Mason and earning Rs.25,000/- per month. However, the Tribunal without considering the nature of work and the year of accident, i.e., 2017 had fixed only a sum of Rs.6,000/- as the monthly income of the deceased and awarded only a very meagre sum under the head "Loss of Income". Hence, the Tribunal ought to have fixed at least Rs.25,000/- as the monthly income of the deceased and consequently, the amount under the head "Loss of Income" may be enhanced.

10. The next contention of the learned counsel for the appellants/claimants is that the Tribunal failed to award any amount towards "Loss of Love and Affection" to the children of the deceased, for the loss of their father's love, protection and guidance at their tender age. Further, the amounts awarded by the Tribunal under all the other heads are also very meagre and the same may be enhanced.

11. The learned counsel for the second respondent/Insurance Company made his submissions supporting the award passed by the Tribunal.

12. Heard both sides and perused the materials available on record.

13. The accident had occurred in the year 2017. Considering the cost of living prevalent at the time of the accident and the nature of work of the deceased, it would be appropriate to fix a sum of Rs.12,000/- as monthly income of the deceased. Accordingly, if so fixed, the Loss of Income to the claimants is calculated as follows:



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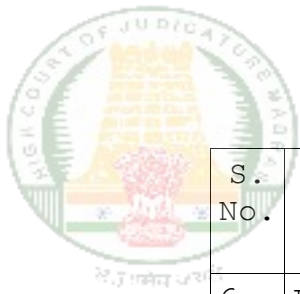
Monthly Income	:Rs.12,000/-
Add: Future Prospects at 25% 25% of 12,000	: Rs.3,000/- ----- Rs.15,000/-
Annual Income (15,000 x 12)	: Rs.1,80,000/-
Multiplier	: x 13 ----- Rs.23,40,000/-
Less:1/4 Deduction towards personal expenses	:Rs.5,85,000/- -----
Loss of Income	Rs.17,55,000/-

Thus, the sum of Rs.7,02,000/- awarded by the Tribunal under the head "Loss of Income" is set aside, instead a sum of Rs.17,55,000/- is awarded under such head.

14. Since no amount was awarded by the Tribunal under the head "Loss of Love and Affection" to the children of the deceased, viz., claimants 2 & 3 and 3rd respondent, a sum of Rs.1,20,000/- is awarded under such head by awarding each of the children a sum of Rs.40,000/-.

15. The amounts awarded by the Tribunal under all the other heads are just and fair and hence, they are confirmed. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

S. No.	Heads under which amounts are awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of Income	7,02,000	17,55,000
2.	Future Prospects for 25%	1,75,500	-
3.	Loss of Estate	15,000	15,000
4.	Funeral Expenses	15,000	15,000
5.	Loss of Consortium	40,000	40,000



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S. No.	Heads under which amounts are awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
6.	Loss of Love and Affection	-	1,20,000
	Total	9,47,500	19,45,000

16. Thus, the total compensation of Rs.9,47,500/- awarded by the Tribunal is hereby enhanced to Rs.19,45,000/- (Rupees nineteen lakhs and forty five thousand only), which shall carry interest at 7.5% from the date of claim petition till the date of payment. The second respondent/Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants and the third respondent are permitted to withdraw their respective share amounts as apportioned by the Tribunal. The appellants/claimants shall pay necessary Court fee, on the enhanced compensation.

17. With the above observations and directions, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

pvs
To

1. The Principal District Court, Namakkal/
The Motor Accident Claims Tribunal.

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

+2 Ccs to Mr.C. Thangaraju, Advocate sr 33443.
+1 CC to M/s.R. Sreevidhya, Advocate sr 33160.

C.M.A. No.1442 of 2021

BP(CO)
SP(06/01/2022)