



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 30.11.2021

C O R A M

THE HONOURABLE Mrs. JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal No. 1553 of 2018

- 1) Duraikannu
- 2) Pushpanathan
- 3) Sekar
- 4) Chakkaravarthy
- 5) Dulasiammal
- 6) Rajalakshmi .. Appellants/ petitioners

Vs

1. S.Sathish
(set Exparte before Tribunal)
2. The Divisional Manager,
Iffco Tokio General Ins. Co.Ltd.,
No.128, IV Floor, IFFCO Bhavan,
Habibullah Road, T.Nagar,
Chennai. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under section 173 of MV Act 1988, against the Award and Decree dated 10.04.2018 in M.C.O.P.No.4102 of 2016 on the file of the Motor Accidents Claims Tribunal Judge, Special Sub Judge, Cuddalore by enhancing the Award amount.

For Appellants .. M/s.Ramya
for M/s.R.Sreedhar

For R-1 .. Ex parte
For R-2 .. Mr.C.K.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the Award and Decree dated 10.04.2018 in M.C.O.P.No.4102 of 2016 on the file of the Motor Accidents Claims Tribunal Judge, Special Sub Judge, Cuddalore.

2. The claimants are the appellant herein.



3. The case of the claimants before the trial Court is as follows:

It is a case of fatal accident. In an accident that had occurred on 05.09.2016 at about 17.30 hrs., when one Rajalakshmi was riding her two wheeler, the deceased travelled as a pillion rider. Since the said Rajalakshmi was riding her two wheeler in a rash and negligent manner, the deceased fell down, as a result of which, the deceased sustained head injury. She was immediately taken to the Pondicherry Mahatma Gandhi College & Hospital and thereafter, she was admitted to JIPMER hospital at Pondicherry. Due to the said injuries sustained by her, the deceased died in the hospital. Since the accident occurred due to the rash and negligent driving of the rider of the two wheeler, owned by the 1st respondent, which was insured with the second respondent, the appellants filed a claim petition seeking compensation of Rs.20,00,000/-.

4. Before the Tribunal, the 2nd respondent denied the manner in which the accident occurred and denied the allegations made in the claim petition. It is the case of the 2nd respondent that the deceased was not wearing a helmet at the time of accident and it is against law and hence, it is the case of the 2nd respondent that the 2nd respondent is not liable to pay any compensation and prayed for dismissal of the claim petition.

5. Before the Tribunal, on the side of the claimants, two witnesses were examined as P.W.1 and P.W.2 and marked Ex.P1 to Ex.P7. On the side of the 2nd respondent, one witness has been examined as R.W.1 and one document was exhibited as Ex.R.1.

6. The Tribunal, on considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent driving of the rider of the motor cycle and awarded a sum of Rs.1,98,500/- as compensation fixing the contributory negligence of 15% on the first respondent for allowing the deceased to travel in the two wheeler without a helmet and accordingly, after reducing the contributory negligence of 15% ie., Rs.29,775/-, the Tribunal awarded a sum of Rs.1,68,725/- with interest at 7.5% from the date of petition till the date of realisation. Not being satisfied with the compensation awarded by the Tribunal, the claimants, who are the legal heirs, are before this Court by way of this Appeal.

7. Heard the learned counsel for the parties and perused the material documents available on record.

8. It is the case of Appellants/Claimants that, the Tribunal erred in fixing the monthly income of the deceased at



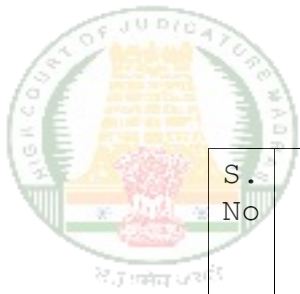
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Rs.3,300/-, when she was actually earning a sum of Rs.20,000/- per month as Milk Vendor and that, the Tribunal ought to have fixed the monthly income as Rs.10,000/- as prevailing notional income as fixed by the Apex Court and this Court repeatedly. The Tribunal ought to have considered Rs.20,000/- each for the claimants under the head love and affection.

9.It is seen that, the Tribunal has fixed only a sum of Rs.3,300/- as the monthly income of the appellant, though the deceased was a milk vendor, which is found to be inappropriate and hence, fixing the monthly income as Rs.7,500/- would meet the ends of justice. Accordingly, the loss of pecuniary is calculated at $\text{Rs.7,500} \times 12 \times 5 = \text{Rs.4,50,000/-}$. The amount awarded by the Tribunal for transportation to the hospital is enhanced from Rs.10,000/- to Rs.15,000/-. The amount awarded by the Tribunal towards loss of love and affection is enhanced from Rs.25,000/- to Rs.1,00,000/-. Accordingly, each appellant, namely, appellants 1 to 5 are entitled to a sum of Rs.20,000/- each. Towards the head of funeral expenses, the Tribunal has awarded a sum of Rs.10,000/- and it has been enhanced to Rs.15,000/-. The Tribunal has awarded a sum of Rs.5,000/- both for loss of consortium and loss of estate. This Court is of the view that towards the head of loss of consortium, the first appellant is entitled to a sum of Rs.40,000/- instead of Rs.5,000/- and towards the head of loss of estate Rs.15,000/- is awarded.

10.In fine, the quantum of compensation awarded by the Tribunal is enhanced to a sum of Rs.5,40,000/-. Details of the same are tabulated below:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount modified by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Pecuniary loss	$1,98,000/-$ $(1,98,000 \times 4 / 3)$ $=148500$	$4,50,000.00$ $7500 \times 12 \times 5$	Enhanced
2.	Loss of consortium to the 1 st appellant/ husband of the deceased	5,000.00	40,000.00	Enhanced



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount modified by this Court (Rs.)	Award confirmed or enhanced or granted
3.	Loss of Love and Affection	25,000.00	1,00,000.00 (5 * 20,000.00)	Enhanced
4.	Funeral expenses	10,000.00	15,000.00	Enhanced
5	Transportation	10,000.00	15,000.00	Enhanced
6	Loss of Estate	-	15,000.00	Enhanced
	Total	1,98,500/-	6,35,000.00 (635000*15%= 5,39,750/-) Rounded off to Rs.5,40,000/-	Enhanced

11. In the result, the compensation of a sum of Rs.1,48,500/- awarded by the Tribunal is hereby enhanced to a sum of Rs.6,35,000/- and after deducting the contributory negligence of 15% on the part of the 1st respondent, the award is hereby enhanced to Rs.5,40,000/- (Rupees Five lakhs forty Thousand only), together with interest at the rate of 7.5% per annum from the date of filing the Claim Petition till the date of deposit. The 2nd respondent is directed to deposit the Award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.4102 of 2016 on the file of the Motor Accidents Claims Tribunal Judge, Special Sub Judge, Cuddalore. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the Appellants/Claimants through RTGS, within a period of two weeks.

12. Appellant/Claimant shall pay necessary Court fee, if any, on the enhanced compensation. However, it is made clear that, if there is any delay in filing the above Appeal and in case, any order is passed by this Court earlier depriving interest for the period of delay in question, interest for the period of delay shall be excluded.



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13. In fine, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar

RR

To

1.The Motor Accidents Claims Tribunal Judge,
Special Sub Judge,
Cuddalore

2.The Divisional Manager,
Iffco Tokio General Ins. Co.Ltd.,
No.128, IV Floor, IFFCO Bhavan,
Habibullah Road, T.Nagar,
Chennai.

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

+2cc to Mr.Ramya V.Rao, Advocate SR.No.62680

C.M.A.No.1553 of 2018

SSV(CO)
GN(20/01/2022)