



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.1664 of 2018

1.Malliga

2.Alamelu

3.Jayanthi

... Appellants/Petitioners

Vs.

1.Suresh Kumar

2.United India Insurance Company Limited,
Branch Office,
Dharmapuri Post and 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 25.04.2018 made in M.C.O.P.No.306 of 2017, on the file of the Motor Accidents Claims Tribunal, Special District Judge, Dharmapuri.

For Appellants : Mr.S.Sathiaseelan

For R2 : Mr.C.Paranthaman

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 25.04.2018 made in M.C.O.P.No.306 of 2017, on the file of the Motor Accidents Claims Tribunal, Special District Judge, Dharmapuri.

2.The appellants are the claimants in M.C.O.P.No.306 of 2017, on the file of the Motor Accidents Claims Tribunal,



Special District Judge, Dharmapuri. The appellants are the daughters of the deceased. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of Balakrishnan, who died in the accident that took place on 23.06.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the crane vehicle belonging to the first respondent and directed the 2nd respondent/Insurance Company being insurer of the said vehicle to pay a sum of Rs.1,30,000/- as compensation to the appellants.

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

5.The learned counsel appearing for the appellants contended that the deceased was an agriculturist and doing milk vendor business and was earning a sum of Rs.15,000/- per month. The Tribunal fixed meagre sum of Rs.2,500/- per month as notional income of the deceased and granted only a sum of Rs.1,00,000/- towards pecuniary loss. The deceased has taken treatment in the Government Medical College Hospital, Dharmapuri as inpatient for 24 days from 23.06.2016 to 16.07.2016. The Tribunal has not awarded any compensation towards pain and sufferings, attendant charges, transport expenses and loss of love & affection and prayed for enhancement of compensation.

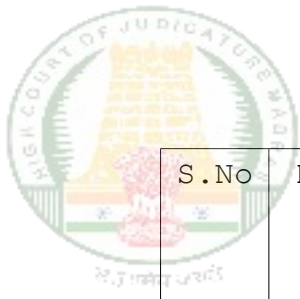
6.Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the appellants have not produced any material evidence to prove that the deceased was earning a sum of Rs.15,000/- per month. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.2,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal after considering both oral and documentary evidence in proper perspective has granted just compensation, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent/Insurance Company and perused the entire materials on record.



8. It is the contention of the appellants that the deceased was an agriculturist and a milk vendor was earning a sum of Rs.15,000/- per month. They failed to prove the said contention. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.2,500/- per month as notional income of the deceased. The accident occurred in the year 2016 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.9,000/- per month is fixed as notional income of the deceased. The deceased was aged 80 years at the time of accident. The Tribunal following the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] rightly adopted multiplier '5'. There are three dependants of the deceased and the Tribunal has deducted 1/3rd towards personal expenses of the deceased, which is proper. Thus, by fixing Rs.9,000/- per month as notional income of the deceased, the compensation awarded by the Tribunal towards pecuniary loss is modified to Rs.3,60,000/- [Rs.9,000/- X 12 X 5 X 2/3]. The deceased has taken treatment in the Government Medical College Hospital, Dharmapuri as inpatient for 24 days from 23.06.2016 to 16.07.2016. The Tribunal has not awarded any amounts towards pain & sufferings, attendant charges and transportation charges. Considering the period of treatment, a reasonable sum of Rs.40,000/-, Rs. 6,000/- and Rs.15,000/- are granted towards pain & sufferings, attender charges and transportation charges. The Tribunal failed to award compensation towards loss of love & affection. A reasonable sum of Rs.1,20,000/- is granted towards loss of love & affection. The amounts awarded by the Tribunal towards loss of estate and funeral expenses are just and reasonable and hence the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary loss	1,00,000/-	3,60,000/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15000/-	15,000/-	Confirmed



S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
4.	Loss of love and affection	-	1,20,000/-	Granted
5.	Pain and sufferings	-	40,000/-	Granted
6	Attendant charges	-	6,000/-	Granted
7	Transportation charges	-	15,000/-	Granted
	Total	Rs.1,30,000/-	Rs.5,71,000/-	Enhanced by Rs.4,41,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,30,000/- is hereby enhanced to Rs.5,71,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent/Insurance Company 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 six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.306 of 2017, on the file of the Motor Accidents Claims Tribunal, Special District Court, Dharmapuri. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

mpa
To

The Special District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.



Copy to

The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.S.Sathiaseelan, Advocate Sr.59685
+1cc to M/s.C.Paranthaman, Advocate Sr.59858

C.M.A.No.1664 of 2018

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srg 07/02/2022