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C.M.A. No.2545 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.2545 of 2021

1. K.Ayyanar
2. A.Chandra

...appellants

Vs.

1. Pachamuthu
2. M/s.National Insurance Company Ltd.,
Divisional Office, 7, No.50-Janpath,
New Delhi 110 001.

...respondents

**[1st respondent remained ex-parte before the Tribunal,
hence notice may be dispensed for R1 in this appeal]**

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 seeking enhancement of the compensation in the judgment and decree dated 02.01.2020 made in MCOP.No.1047 of 2017, on the file of Motor Accident Claims Tribunal/Principal District Court at Namakkal.

For Appellants : Mr.M.Lokesh

For Respondents
for R1 : Set ex-parte before the Tribunal



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J U D G M E N T

WEB COPY [Judgment of the Court was delivered V.SIVAGNANAM, J]

The appeal is heard through video conferencing.

2. Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal/Principal District Court at Namakkal in MCOP.No.1047 of 2017, dated 02.01.2020, the claimants have come up with this appeal.

3. It is the case of the appellants/claimants, who are the parents of the deceased Murugesan, that on 14.01.2016 at about 9.00 p.m. the deceased was riding a Hero Honda Splendor Plus Bike bearing Registration No.TN-52-X-5964 on the Pennagaram to Mecheri Main Road. When he was nearing a TASMACH Shop at Mallikundham, another Hero Splendor Pro Bike bearing Registration No.TN-29-BB-7518, driven by its driver in the opposite direction in a rash and negligent manner, hit against him. Due to the impact, the deceased sustained multiple fractures and grievous injuries in his head and all over the body. Immediately, the deceased was admitted in Manipal Hospital, Salem for first aid treatment and then shifted to Vinayaga Mission Hospital, Salem. In spite of the best treatment, he succumbed to the



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injuries on 15.01.2016. Hence, the claimants laid a claim petition claiming a sum of Rs.20,00,000/- as compensation

4. Resisting the claim petition, the Insurance Company filed their Counter statement denying the manner of accident as projected by the claimant, age, avocation and income of the deceased and its liability to pay the compensation.

5. To substantiate the case on the side of the claimants, PW1 and PW2 were examined and Exs.P1 to P9 were marked. On the side of the Insurance Company, neither any oral evidence was adduced, nor any document was marked.

6. The Tribunal, after considering the oral and documentary evidence, held that the accident had occurred due to the rash and negligent driving of the motorcycle bearing Registration No.TN-29-BB-7518, which is owned by the first respondent. By coming to such conclusion, the Tribunal passed an award for a sum of Rs.10,54,620/- and directed the second respondent/Insurance Company to pay the above compensation.



7. It is the contention of the learned counsel for the appellants that the deceased was 19 years old at the time of the accident and he was an Auto Driver and earning Rs.15,000/- per month. Hence, the Tribunal ought to have fixed Rs.15,000/- as monthly income of the deceased. However, the Tribunal, without considering the same and also not taken into account the year of the accident, i.e.,2016, fixed a meager sum of Rs.6,000/- as his monthly income and made calculation on that basis and arrived at a sum of Rs.6,48,000/- under the head Loss of Dependency. Further, the amounts awarded by the Tribunal under other conventional heads are also very meagre, which needs proper enhancement.

8. *Per contra*, the learned counsel for the Insurance Company made his submissions supporting the award passed by the Tribunal.

9. Heard the learned counsels appearing on either side and perused the materials available on record.

10. Perusal of records reveals that the deceased was 19 years at the time of the accident and he was working as an Auto Driver. Though the claimants have alleged that the deceased was earning Rs.15,000/- per



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month, but they had not produced any document to prove the same. Hence,

the Tribunal, by relying upon the decision of the Supreme Court in *New India Assurance Company Ltd., vs. V.Kalpana and others* and also the decision of this Court in *Branch Manager, Oriental Insurance Co., Ltd., vs. Nagoorammal and others* reported in **2016 ACJ 2870** fixed the monthly income of the deceased at Rs.6,000/-. Considering the avocation of the deceased and the cost of living prevalent at the time of the accident, this Court is of the view that the sum of Rs.6,000/- fixed as monthly income of the deceased by the Tribunal is just and fair. As the deceased was a bachelor, the Tribunal deducted 1/2 of the income towards personal expenses and arrived Rs.3,000/- [6,000 - 3,000]. Thereafter, the Tribunal arrived at a sum of **Rs.6,48,000/-** [3,000 x 12 x 18] under the head Loss of Dependency, by applying multiplier 18. That apart, the Tribunal awarded **Rs.2,59,200/-** towards Future Prospects; **Rs.15,000/-** towards Loss of Estate; **Rs.15,000/-** towards Funeral Expenses; **Rs.1,17,420/-** towards Medical Bill. In total, the Tribunal has awarded a sum of **Rs.10,54,620/-** along with interest at the rate of 7.5% per annum. In our opinion, the amount awarded by the Tribunal is fair and reasonable and does not warrant any interference by us. Hence, the award of the Tribunal is confirmed.



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Hence, the Civil Miscellaneous Appeal fails and the same is liable to be dismissed.

11.In such view of the matter, this Civil Miscellaneous Appeal is dismissed as devoid of merits. The second respondent is directed to deposit the entire award amount with accrued 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 order. On such deposit, the claimants are permitted to withdraw their share as apportioned by the Tribunal, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected Miscellaneous Petition is closed.

[M.K.K.S, J] [V.S.G., J]
15.09.2021

Index : Yes / No
Speaking order: Yes/No
pvs

To
1. The Motor Accident Claims Tribunal/
Principal District Court at Namakkal
2. The Section Officer,
V.R.Section, High Court, Madras.



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