



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.06.2021

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THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal No. 1344 of 2020

1.R.Vanitha

2.S.Jeyalakshmi

3.Minor R.Niranjana,
minor represented by Mother,
1st petitioner as Guardian

.. Appellants/Petitioners

Versus

D.Janarthanan (Died)

1.The .Divisional Manager,
United India Insurance Company Limited,
DO No.13A, Nethaji Road,
Cuddalore-607 001.

2.Ashok Kumar, S/o.D.Janarthanan
(Amended as per order in

I.A.No.578/2016 dated 08.09.2016) .. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Award and Decree dated 07.07.2020 made in M.C.O.P. No. 369 of 2016 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Cuddalore.

For Appellants : Mr.A.N.Viswanatha Rao

For R2 : unclaimed

For R1 : D.Baskaran

JUDGMENT

This civil miscellaneous appeal has been filed by the appellants/claimants for enhancement of compensation awarded by the Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Cuddalore, in M.C.O.P. No. 369 of 2016 dated 07.07.2020.

2. As per the averments in the claim petition filed before the Tribunal, on 21.07.2015 at about 14.30 hrs when the deceased was proceeding in the Yamaha motor cycle bearing



registration number PY 01 BU 5627 from south to north, at a moderate speed, keeping extreme left of Airport Main Road, near Women's Polytechnic College, Lawspet, Pondicherry, a Honda Hunk Motor Cycle bearing registration number PY 01 AN 8993 came in a rash and negligent manner in a opposite direction in a rash and negligent manner and hit the deceased which led to the death of the deceased. The claimants are the wife, daughter and minor son of the deceased. The claimants claimed a sum of Rs.30,00,000/- towards the compensation for the death of the deceased/Ravi.

3. Before the Tribunal, the 1st respondent insurance company filed counter by denying the manner of accident as alleged in the claim petition. The Insurance Company resisted the claim petition by stating that the deceased failed to observe traffic on the road and tried to cross the junction and in that process the deceased dashed against the said Honda Hunk Motor Cycle and the deceased was solely responsible for the said accident. Even though the insurance company is the insurer of the offending vehicle, contributory negligence is there on the part of the deceased. The Insurance Company also disputed the age and occupation of the deceased and also the amount of compensation claimed under various heads.

4. In order to prove the claim, on the side of claimants, the first claimant was examined as P.W.1, one Mr.Vijayan, an eye witness was examined as P.W.2, one doctor Mr.Balamurugan was examined as P.W.3 and 10 documents were marked viz., Ex.P.1 to P.10. On the side of the second respondent no oral or documentary evidence was adduced.

5. The Tribunal after analysing the entire evidence available on record came to the conclusion that the accident was occurred due to the rash and negligent driving of the driver of the Honda Hunk Motor Cycle belongs to the second respondent and insured with the first respondent and passed an award for a sum of Rs.9,86,200/- under the various heads.

6. Not being satisfied with the award passed by the Tribunal, the present appeal has been filed by the claimants for enhancement of compensation.

7. The learned counsel for the appellant would submit that the Tribunal has fixed only Rs.9,000/- per month for the deceased who was working as a supervisor and the same requires interference of this court. He further submitted that award amount towards love and affection is meagre and the same needs enhancement.

8. The learned counsel for the 1st respondent would submit that award amount passed by the Tribunal is perfectly in order and the same may be confirmed.

9. Heard the counsel for both sides and perused the materials placed on record. The Tribunal, on appreciation of the oral and documentary evidence, awarded compensation under

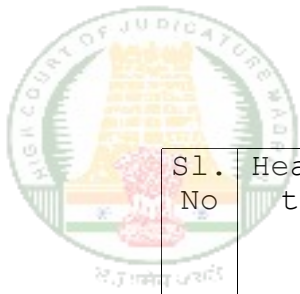


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Sl.No	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)
1	Loss of income	Rs.8,71,200/-
2	Loss of Consortium	Rs.40,000/-
3	Loss of Love and affection	Rs.45,000/-
4	Transportation	Rs.15,000/-
5	Funeral Expenses	Rs.15,000/-
	Total	Rs.9,86,200/-

10. Admittedly the accident was of the year 2015 and the deceased as a supervisor would have definitely earned a sum of Rs.11,000/- per month. Hence, this Court is inclined to take the monthly income as Rs.11,000/-. If Rs.11,000/- is taken as the monthly income, the annual income would be arrived at Rs.1,32,000/-. As the claimant was aged about 52 years at the time of accident, 10% of the amount there of has to be added towards future prospects. In such case, the annual income of the deceased will scale up to (Rs.12,100 x 12=1,45,200). Since the deceased was aged 52 years at the time of accident, the correct multiplier is "11" and in which, 1/3rd is to be deducted since there are three claimants. Accordingly the loss of income comes to Rs.15,97,199/- out of which, if 1/3rd is deducted, as such, the total pecuniary loss comes to Rs.10,64,800/-.

11. The Tribunal towards loss of consortium has awarded Rs.40,000/- and Rs.45,000/- towards loss of love and affection. As per the decision in the case of National Insurance Company Limited vs. Pranay Sethi and others reported in (2017) 16 Supreme Court Cases 680 Rs.40,000/- has to be awarded towards loss of love and affection. Hence, an amount of Rs.80,000/- is awarded under the head of loss of love and affection i.e., Rs.40,000/- each for the claimants 2 and 3. The Tribunal has not awarded any compensation towards loss of estate and this Court is inclined to award Rs.15,000/- towards loss of estate. Except the above said modifications, the award passed by the Tribunal under various heads are confirmed. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs. The compensation awarded by the Tribunal is modified as follows:



Sl. No	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)	Award confirmed or enhanced or granted
1	Loss of income	Rs.8,71,200/-	Rs.10,64,800/-	enhanced
2	Loss of Consortium	Rs.40,000/-	Rs.40,000/-	confirmed
3	Loss of Love and affection	Rs.45,000/-	Rs.80,000/-	enhanced
4	Transportation	Rs.15,000/-	Rs.15,000/-	confirmed
5	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	confirmed
6	Loss of estate	---	Rs.15,000/-	Now granted
	Total	Rs.9,86,200/-	Rs.12,29,800/- rounded off to Rs.12,30,000/-	Enhanced to Rs.2,43,800/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,86,200/- is hereby enhanced to a sum of Rs.12,30,000/- with interest and costs. The second respondent/Insurance Company is directed to deposit the enhanced award amount, with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the first appellant is entitled to a sum of Rs.6,15,000/- as compensation being the wife of the deceased; the appellants 2 and 3 are entitled to a sum of Rs.3,07,500/- each, being the children of the deceased. The 3rd appellant/claimant is permitted to withdraw his respective share amount, with interest and costs after attaining majority. The share of the minor appellant is directed to deposit in any one of the nationalized bank as fixed deposit, till he attain majority. The first appellant/claimant, being the mother of the minor/appellant 3, is permitted to withdraw the interest amount once in every three months for the welfare of the minor appellant/claimant 3, till he attain majority. The appellant/claimant shall pay the necessary Court fee, if any for the enhanced award amount. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar



1. The Motor Accident Claims Tribunal,
Additional District and Sessions Judge,
Cuddalore.

2. The Section Officer
Vernacular Records Section
High Court, Madras.

CMA.No.1344 of 2020

GP (CO)
GN (19/11/2021)