

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

C.M.A.No.1228 of 2014

1. Makbool
2. Noorjan
3. Sharmila

... Appellants

Versus

1. M/s. TESCO Hindustan Service
Centre Pvt. Ltd.,
No.81 & 82, EPIP,
White Field,
Bangalore - 560 066.

2. The Royal Sundaram Alliance
Insurance Company Ltd.,
Sundaram Towers,
No.45 & 46 Whites Road,
Chennai - 600 104.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 18.04.2012 made in M.C.O.P.No.1072 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Krishnagiri.

For Appellant : Mr.K.Prasanna
For Mr.M.Sriram
For Respondents
For R1 : Not ready in notice
For R2 : Mr.E.Rajadurai
For Mr.N.Vijayaraghavan

J U D G M E N T

This appeal is laid as against the judgment and decree dated 18.04.2012 passed by the learned Additional District Judge, Motor Accident Claims Tribunal, Krishnagiri, in M.C.O.P.No.1072 of 2010, thereby awarded the compensation to the tune of Rs.3,76,000/-

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimants is that on 07.06.2009, when the deceased was walking on the left side of the bye pass road, the car belonged to the first respondent and insured with the second respondent, had driven by its driver in rash and negligent manner and dashed against the deceased and caused accident. Due to the accident, the deceased sustained grievous and fatal injuries. Immediately he was taken to the Government Hospital,

Krishnagiri and he was advised to take to Bangalore Hospital for further treatment. Again he was referred to the Government General Hospital, Chennai. Finally on 14.06.2009, he was succumbed due to the injuries. Hence the claimants filed claim petition seeking compensation at Rs.10,00,000/-.

4. Resisting the same, the second respondent filed counter stating that only on the negligent walking of the deceased, the accident took place and as such, the second respondent is not at all liable to pay any compensation and sought for dismissal of the claim petition.

5. On the side of the claimants, they examined P.W.1 and marked Ex.A.1 to Ex.A.4. On the side of the respondents, no one was examined and no material has been marked as exhibit. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal awarded a sum of Rs.3,76,000/- as compensation payable by the respondents jointly and severally. Being not satisfied with the quantum of the compensation

awarded by the Tribunal, the claimants came forward with the present appeal for enhancement.

6. The learned counsel appearing for the appellants/claimants submits that the deceased was died at the age of 18 years and he was working as a mechanic in the mechanical workshop and he was earning a sum of Rs.7,500/- per month. Even then, the Tribunal had taken his salary as Rs.3,000/- per month and failed to considered the future prospect. In other heads also the Tribunal awarded very low compensation and it is liable to be enhanced. Therefore, he prayed for enhancement of the award amount.

7. Per contra, the learned counsel appearing for the second respondent contended that the deceased negligently crossed the road as such, the accident took place. Therefore, the second respondent is not at all liable to pay any compensation. In respect of the quantum is concerned, the deceased was minor at the time of his death and he was not working in anywhere and not earned as claimed by the claimants. In fact, the Tribunal awarded excess compensation and it is liable to be confirmed. Therefore he

prayed for dismissal of the appeal.

8. Heard Mr.K.Prasanna, learned counsel appearing for the claimant and Mr.E.Rajadurai, learned counsel appearing for the second respondent.

9. On 07.06.2009, while the deceased was walking on the left side of the bye pass road near old RTO Office, Krishnagiri District, the vehicle owned by the first respondent and insured with the second respondent was driven by its driver in rash and negligent manner and dashed against the deceased and caused accident. Immediately the deceased was taken to the Government Hospital, Krishnagiri and thereafter referred to Bangalore Hospital. Again he was taken to the Government General Hospital, Chennai and admitted as inpatient. However, the deceased died on 14.06.2009.

10. Though the claimants stated the age of the deceased was 18 years at the time of accident, the postmortem report, which is marked as Ex.P.2 revealed that the age of the deceased is 15 years. P.W.1 deposed that

the deceased was working as mechanic and earned a sum of Rs.7,500/- per month. But to prove the same, no document was produced as proof of the income. However, there is no rebuttal evidence produced by the respondents. Therefore, the Tribunal had taken a sum of Rs.3,000/- as monthly income and after deducting the half of the income for his personal expenses, awarded the compensation by applying 18 multiplier. However, the Tribunal failed to award any compensation for his future prospects.

11. Considering the facts and circumstances, the monthly income has to be taken at Rs.4,500/- per month. Since the accident took place in the year 2009, the future prospect has to be taken at 40% of the income towards the future prospects. After deducting 50% of the income towards personal expenses, the pecuniary loss by the claimants is calculated as follows :-

$$= [(Rs.4,500/- + 40\%) \times 12 \times 18] - 50\%$$

$$= [(Rs.4,500/- + 1,800) \times 12 \times 18] - 50\%$$

$$= [6,300 \times 12 \times 18] - 50\%$$

$$= 13,60,800 - 50\% = 6,80,400$$

Accordingly, a sum of Rs.6,80,400/- has to be awarded under the head of loss of pecuniary benefits to the claimants.

12. That apart, the Tribunal awarded very low compensation for transportation and funeral expenses and failed to award any compensation under the head of pain and sufferings. Therefore, this Court is inclined to grant a sum of Rs.10,000/- towards funeral expenses and a sum of Rs.20,000/- towards transportation and to award a sum of Rs.10,000/- and Rs.15,000/- towards loss of estate and pain & sufferings. Further, the interest on the award amount granted by the Tribunal has to be enhanced from 6% to 7.5% .

13. Accordingly the compensation awarded by the Tribunal stands modified as under :-

<i>Sl.No</i>	<i>Heads</i>	<i>Awarded by the Tribunal</i>	<i>Awarded by this Court</i>
1	Loss of Pecuniary	3,24,000	6,80,400
2	Love and affection	42,000	42,000
3	Transportation	5,000	20,000
4	Funeral Expenses	5,000	10,000

<i>Sl.No</i>	<i>Heads</i>	<i>Awarded by the Tribunal</i>	<i>Awarded by this Court</i>
5	Pain & sufferings	Nil	10,000
6	Loss of estate	Nil	15,000
	Total	3,76,000	7,77,400

14. In the result the Civil Miscellaneous Appeal is allowed as follows:-

(i) The award passed by the Tribunal is enhanced from Rs.3,76,000/- to Rs.7,77,400/-

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The claimants are entitled to get the modified award amount as follows:-

First claimant - Rs. 2,25,000/-

Second claimant - Rs. 4,00,000/-

Third claimant - Rs. 1,52,400/-

(iv) The second respondent is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(v) On such deposit, the claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(vi) The appellants/claimants are not entitled to any interest for the condoned delay (default) period, if any.

(vii) The claimants shall pay requisite Court fee before the receipt of the copy of the judgment for the enhanced compensation.

(viii) There shall be no order as to costs.

21.04.2021

Index: Yes/No
Internet: Yes/no
Speaking/Non-speaking Order

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To

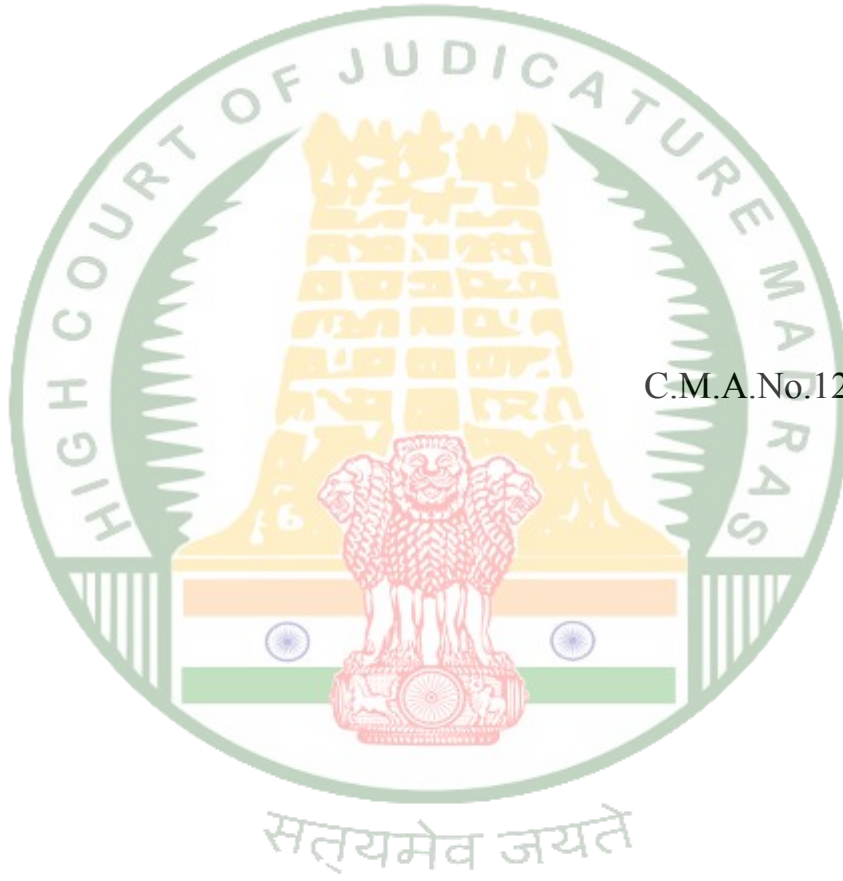
1. The Additional District Judge,
Motor Accident Claims Tribunal,
Krishnagiri

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

C.M.A.No.1228 of 2014

G.K.ILANTHIRAIYAN, J.

rts



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