



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1969 of 2020

1.Sivakumari
2.Bagavathi Devi
3.Ganesamurthy ...Appellants / Claimants

Vs.

1.K.O.Srinivasan
(R1 remained exparte before the Tribunal
and hence, notice to R1 is dispensed with)
2.The Divisional Manager
Divisional Office
Oriental Insurance Company Limited
Parimalam complex
Erode-638 011. ...Respondents / Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.02.2020 made in M.C.O.P.No.581 of 2017 on the file of Motor Accident Claims Tribunal, Special District Court dealing with MCOP cases, Erode.

For Appellants : Mr.M.Lokesh
for Mr.MA.P.Thangavel

For R2 : Mr.M.J.Vijayaraaghavan

J U D G M E N T

This matter is heard through 'Video-conferencing'.

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 21.02.2020 made in M.C.O.P.No.581 of 2017 on the file of Motor Accident Claims Tribunal, Special District Court dealing with MCOP cases, Erode.

2.The appellants are claimants in M.C.O.P.No.581 of 2017



on the file of Motor Accident Claims Tribunal, Special District Court dealing with MCOP cases, Erode. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Natarajan, who died in the accident that took place on 05.02.2017.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, the driver-cum-owner of the car and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.3,09,425/- 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 at the time of accident, the deceased was aged 74 years. He was a retired School Master and was getting a sum of Rs.18,713/- per month as pension and was totally earning a sum of Rs.25,000/- per month by taking tuition and doing agricultural works. The Tribunal ought to have applied multiplier '5' as per the decision of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another]. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that as per the judgment of the Hon'ble Apex Court, no multiplier should be applied for the age above 70 years. The deceased was aged 74 years at the time of accident and therefore, the Tribunal has not applied multiplier. The amounts awarded by the Tribunal under different heads are excessive. Therefore, the appellants are not entitled to any enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 2nd respondent/Insurance Company and perused the entire materials available on record.

8.From the materials on record, it is seen that it is the contention of the appellants that the deceased was aged 74 years at the time of accident, he was a retired School Master-cum-agriculturist and was earning a sum of Rs.25,000/- per month. One Ms.Kavitha, who was working as an Officer in the Treasury, was examined as P.W.2 to prove the income of the deceased and marked pension particulars of the deceased as Exs.P12 and P13.



The Tribunal accepting the same, fixed a sum of Rs.18,283/- as monthly income of the deceased and deducted 1/3rd towards personal expenses. The Tribunal has not applied multiplier on the ground that the multiplier should not be applied for the age above 70 years. The said reason is not correct. As per 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], multiplier '5' should be applied for the persons aged above 65 years. By applying multiplier '5', the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.7,31,320/- (Rs.18,283/- X 12 X 5 X 2/3). The amounts awarded by the Tribunal under all other heads are not 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 or reduced
1.	Loss of dependency	1,46,388	7,31,320	Enhanced
2.	Funeral expenses	15,000	15,000	Confirmed
3.	Damage to articles	15,000	15,000	Confirmed
4.	Loss of love and affection	50,000	50,000	Confirmed
5.	Transportation	10,000	10,000	Confirmed
6.	Loss of consortium to the 1 st appellant	40,000	40,000	Confirmed
7.	Medical expenses	33,037	33,037	Confirmed
	Total	3,09,425	8,94,357	Enhanced by Rs.5,84,932/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,09,425/- is hereby enhanced to Rs.8,94,357/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd 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. On such deposit, the appellants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Special District Judge
(dealing with MCOP cases)
Motor Accident Claims Tribunal
Erode.

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

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.2656

C.M.A.No.1969 of 2020

VBA (CO)
RVM(26/07/2021)