



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.3146 of 2019

1.Papppathi

W/o.Late Srinivasan

2.Manoharan

W/o.Late Srinivasan

3.Saravanan

S/o.Late Srinivasan

... Appellants

Vs.

1.Prabakaran

S/o.Natesan

2.M/s.National Insurance Company Limited,

Divisional Office,

No.74-A, Paramathi Road,

Namakkal.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 03.04.2019 passed in M.C.O.P.No.699 of 2015 on the file of Motor Accident Claims Tribunal, Additional District Judge, Namakkal.



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For Appellants : Mr.C.Thangaraju

For Respondents: Mrs.R.Srividhya [R2]

Ex parte [R1]

JUDGMENT

[The judgment of the Court was delivered by R.SUBBIAH, J]

This matter is heard through Video Conferencing.

2. Not being satisfied with the quantum of compensation awarded by the Tribunal in and by its judgment and decree dated 03.04.2019 passed in M.C.O.P.No.699 of 2015 on the file of Motor Accident Claims Tribunal, Additional District Judge, Namakkal, appellants/claimants have filed the present appeal.

3. For the sake of convenience, the appellants herein are referred to as 'claimants' and the second respondent is referred to as 'Insurance Company'.

4. The brief facts of the case are as follows:

Claimants are wife and sons of the deceased Srinivasan. On 14.03.2015 at about 08.30 p.m., while the deceased was riding his two-wheeler bearing Registration No.TN-46-B-3638 on the Pudupatti North Road, a Lorry bearing Registration No.HR-55-G-8815, belonging to first respondent and insured with the second respondent Insurance Company, came in a rash and negligent manner and dashed against the two-wheeler, as a result of which the deceased sustained grievous injuries and died on the spot. It is the case of claimants that the deceased was doing contract works and was earning a sum of Rs.20,000/- p.m. Hence, they filed a claim petition seeking compensation in a sum of Rs.15,00,000/-.

5. Resisting the claim, the Insurance Company had filed a detailed counter inter alia stating that the accident had not occurred in the manner as projected by claimants. They further denied the age, occupation and income of the deceased.

6. To prove their claim, before the Tribunal, the claimants examined 2 witnesses and marked 15 documents. On the side of Insurance Company, 2 witnesses were examined and 9 documents were marked.



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7. On appreciation of materials, the Tribunal, found that the accident had occurred due to the negligence of both the drivers of the vehicles and fixed 75% negligence on the part of the driver of the Lorry and 25% on the part of the deceased and held that the Insurance Company, being the insurer of the offending vehicle, is liable to pay compensation. The compensation awarded by the Tribunal is as follows:

Sl.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency	8,45,052/-
2.	Loss of consortium	40,000/-
3.	Loss of estate	15,000/-
4.	Funeral expenses	15,000/-
	Total	9,15,052/-
	Rounded off to	9,15,100/-
	Contributory negligence (25%)	2,28,775/-
	Compensation payable	6,86,325/-

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of claim petition till the date of realization. The present appeal has been filed seeking enhancement of compensation by amending the claim amount to Rs.32,25,000/-.

8. Learned counsel for claimants submits that the accident had occurred in the year 2015 and the deceased was doing contract works at the time of accident and was earning a sum of Rs.20,000/- p.m. PW-1/son of the deceased had also deposed with regard to the income earned by the deceased. However, the Tribunal had fixed only a sum of Rs.6,500/- as the monthly income of the deceased and awarded an inadequate sum of Rs.8,45,052/- as compensation under the head 'loss of dependency. Thus, learned counsel prays this Court to fix a sum of Rs.15,000/- as the monthly income of the deceased and accordingly, enhance the compensation.

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

10. This Court has considered the rival submissions and perused the materials on record.

11. This Court finds that since the accident had occurred in the year 2015, the sum of Rs.6,500/- fixed by the Tribunal is extremely on the lower side. Considering the cost of living that was prevailing at that point of time, a sum of Rs.12,000/- could be fixed as the monthly income of the deceased even in the absence of any proof. Accordingly, a sum



of Rs.12,000/- is fixed as the monthly income of the deceased to arrive at a just and reasonable compensation. The compensation payable under the head 'loss of dependency' is re-calculated as follows:

Monthly income	:	Rs.	12,000/-
Add: Future Prospects	:	Rs.	3,000/-
25% of Rs.12,000/-	:	-----	
		Rs.	15,000/-
Less: Personal expenses			
1/3 of Rs.15,000/-	:	Rs.	5,000/-

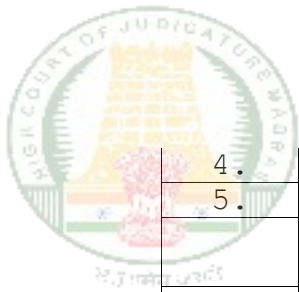
		Rs.	10,000/-
Annual income (10,000 * 12)	:	Rs.	1,20,000/-
Multiplier	:		x 13

		Rs.15,60,000/-	

12. Further, this Court finds that no sum has been granted towards loss of love and affection. Hence, a sum of Rs.80,000/- is granted towards loss of love and affection. Except this modification, the award of the Tribunal, in all other aspects, is hereby confirmed.

13. Accordingly, the modified compensation payable would be:

Sl.No	Compensation awarded under the head	Award of the Tribunal (in Rs.)	Award of this Court (in Rs.)
1.	Loss of dependency	8,45,052/-	15,60,000/-
2.	Loss of consortium	40,000/-	40,000/-
3.	Loss of estate	15,000/-	15,000/-



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4.	Funeral expenses	15,000/-	15,000/-
5.	Loss of love and affection	-	80,000/-
	Total	9,15,052/-	17,10,000/-
	Rounded off to	9,15,100/-	-
	Less: Contributory negligence (25%)	2,28,775/-	4,27,500/-
	Compensation payable	6,86,325/-	12,82,500/-

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.6,86,325/- awarded by the Tribunal is hereby enhanced to Rs.12,82,500/-. The Insurance Company is directed to deposit the enhanced compensation of Rs.12,82,500/-, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. On such deposit being made, the claimants are entitled to withdraw their respective shares, as apportioned by Tribunal, on due application. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

gm

To

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

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

+2ccs to Mr.C.Thangaraju, Advocate SR.No.22552

+1cc to Mrs.R.Srividhya, Advocate SR.No.23161

C.M.A.No.3146 of 2019

SSV (CO)