



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

C.M.A.No.4540 of 2019

1. Kannaki
2. Muruganandham

...Appellants

Vs.

1. C. Kumar
2. IFFCO TOKIO General Insurance Company Ltd.,
Rep.by its Manager
Kingstone Park, II Floor,
No.19/1, Ramalinganagar,
Woraiyur,
Trichy - 620 017.

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.06.2019 made in M.C.O.P.No.185 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Ariyalur.

For Appellants : Mr.J.Prithivi
For Respondents : No appearance for R1
Mr.N.Somasundar for R2

J U D G M E N T

The matter is heard through "Video Conferencing".

2. This Civil Miscellaneous Appeal has been filed against the award dated 03.06.2019 made in M.C.O.P.No.185 of 2017 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Ariyalur.

3.The appellants are the claimants in M.C.O.P.No.185 of 2017 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Ariyalur. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of their child Saravanan, who died in the accident that took place on 27.04.2017.



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

The appellants are the parents of the deceased minor Saravanan aged 5 years. The first respondent is the driver of the two wheeler bearing registration No.TN-61-J-9898 and second respondent-Insurance Company, being the insurer of the two wheeler. At about 9:30 a.m., on 27.04.2017, while the deceased was standing in front of his house the first respondent two wheeler bearing Registration No. TN 61 J 9898 came in a rash and negligent manner and dashed behind the deceased minor Saravanan. As a result the deceased minor Saravanan sustained fatal injuries all over the body and was admitted at Primary Health Centre, Vilangudi and given first aid and thereafter he was treated at Ariyalur Government Hospital from there he was admitted at KNC Speciality Hospitals (I) Ltd., Trichy as inpatient and in spite of severe treatment he died on 04.05.2017. Claimants sought compensation for a sum of Rs.10,00,000/-.

5. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the first respondent two wheeler bearing Registration No. TN 61 J 9898 and directed the 2nd respondent-Insurance Company, being the insurer of the two wheeler to pay a sum of Rs.3,50,000/- as compensation to the appellants.

6. Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

7. The learned counsel appearing for the appellants contended that the deceased was 5 years old at the time of accident and the Tribunal has awarded only a meagre sum of Rs.3,50,000/- as compensation. The appellants are the parents of the deceased and the Tribunal has not awarded any amount towards loss of love and affection, Medical expenses, Transportation, Attender charges, funeral expenses and the deceased was in the hospital from 27.04.2017 to 04.05.2017 and prayed for enhancement of compensation.

8. Per contra, Mr. N. Somasundar, learned counsel appearing for the second respondent-Insurance Company by relying on the judgment of the Apex Court in the case of Rajendra Singh Vs National Insurance Co.Ltd., reported in (2020) 7 SCC 256 contended that in the said case the Hon'ble Supreme Court had awarded only Rs.2,70,000/- for the 12 years girl child who died in



a road accident and therefore the award of the Tribunal in this case is not meagre and the appellants have not made out any case for enhancement of compensation. For the sake of convenience the relevant portion of the judgment (cited supra) is extracted below:-

2. The deceased in the first appeal was a housewife aged about 30 years. The second deceased was her daughter aged about 12 years. The claimants are the husband/father of the deceased and three minor siblings. The two deceased on 25.12.2012 were travelling in a horse cart along with some others to a religious congregation. The horse cart was hit by a bus resulting in their death.

3. The Tribunal assessed the notional income of the first deceased at Rs.36,000 p.a. and after 1/4th deduction towards personal expenses with a multiplier of 17 awarded a compensation of Rs.4,59,000/-. The Tribunal then deducted 50% on ground of contributory negligence as the horse cart was stated to have been in the middle of the road when the accident took place. A sum of Rs.1,00,000/- was then added as loss of consortium and Rs.25,000/- towards funeral expenses leading to an award total of Rs.3,54,500 with interest @ 7.5%.

4. Insofar as the minor child is concerned, the notional income was assessed at Rs.36,000/- p.a., applying 50% deduction towards personal expenses with a multiplier of 15 the compensation was awarded at Rs.2,70,000/- out of which 50% was again deducted towards contributory negligence and a sum of Rs.25,000/- was added towards funeral expenses, leading to an award total of Rs.1,60,000/- with interest @ 7.5%.

9. He further submitted that considering the entire materials on record, the Tribunal has awarded a sum of Rs.3,50,000/- as compensation, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal. However the present appeal has been filed by the claimants for enhancement of the compensation and not by the Insurance company.

10. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent-Insurance Company and perused the entire materials on record.



11. It is the case of fatal accident of a minor child. The Tribunal following the judgment of the Hon'ble Apex Court and judgment of High Court has rightly arrived at compensation of Rs.3,50,000/-. The minor child was admitted in hospital from 27.04.2017 to 04.05.2017 and thereafter he died on 04.05.2017 definitely he would have suffered pain. However this Court is of the view that the Tribunal has awarded a very meagre amount and not taken note of the Medical expenses, transportation, attender charges and Funeral expenses. Considering that the appellants who are the parents of the deceased have lost their child at a very tender age, 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
1.	Total Compensation	Rs.3,50,000/-	Rs.3,50,000/-	Confirmed
2.	Loss of filial consortium	-	Rs.80,000/-	Granted
3.	Funeral expenses	-	Rs.25,000/-	Granted
4.	Loss of estate	-	Rs.15,000/-	Granted
5.	Medical Bills	-	Rs.1,55,395/-	Granted
6.	Transportation charges	-	Rs.25,000/-	Granted
7.	Attender charges	-	Rs.10,000/-	Granted
	Total	Rs.3,50,000/-	Rs.6,60,395/-	enhanced by Rs.3,10,395/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,50,000/- is hereby enhanced to Rs.6,60,395/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the Court fee, if any, on the enhanced amount of compensation now determined by this Court. The 2nd respondent-Insurance Company is



directed to deposit the enhanced award amount now determined by this Court, along with 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 judgment to the credit of M.C.O.P.No.185 of 2017 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Ariyalur. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced award amount of Rs.3,10,395/- each now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

dpq
To

The III Additional District Judge,
Motor Accidents Claims Tribunal,
Special Court for Essential Commodities Law,
Salem.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.S.Kaithamalai Kumaran, Advocate sr 39524
+1 CC to Mr.N.Somasundar, Advocate sr 39702.

C.M.A.No.4540 of 2019

AD(CO)
SP(20/12/2021)