



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2085 of 2017

1.Smt.Ramalakshmma

2.Selvi.Padmavathi

...Appellants/Petitioners

Vs

1.G.Duraisamy

2.E.A.Murugesan

3.Royal Sundaram Alliance Insurance Company Ltd.,  
Sundaram Towers-45 & 46, Whites Road, Chennai-14.

4.V.Sirisha

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree in M.C.O.P.No.70 of 2009 dated 11.07.2011 on the file of the II Additional Subordinate Court, Erode.

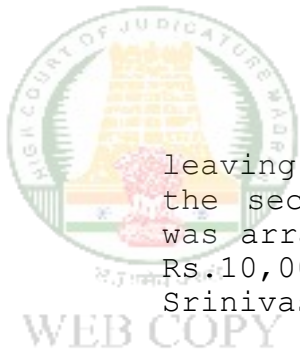
For Appellants : Mr.A.Sivaji (No appearance)

For Respondents: Not ready in notice for R1, R2 & R4  
No appearance for R3

JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimants for enhancement of compensation.

2. The facts of the case is that on 22.06.2008, when the deceased Srinivasalu was walking along the Bhavani to Erode Road near Tamil Nadu Cloth Processing Mill, a lorry bearing registration No.TN 28 J 4322 dashed against the cyclist and capsized. The deceased who was walking caught under the capsized lorry and died. At the time of death, he was 52 years old earning Rs.12,000/- per month as Managing Partner M/s. Naga Arjuna Enterprises. The first claimant is the wife of the deceased. The second and third claimants are his son and daughter of the deceased. Pending claim petition, the son died



leaving behind his wife and the mother as his legal heirs. Since the second claimant's wife did not join as the claimants, she was arrayed as fourth respondent in the claim petition. A sum of Rs.10,00,000/- was sought as compensation for the death of Srinivasalu.

3. The third respondent/Insurance Company resisted the claim on the ground that the accident occurred due to negligence of the deceased and the claim of compensation is on higher side.

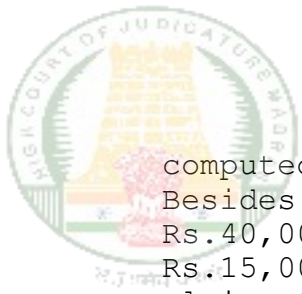
4. Before the Tribunal, three witnesses were examined and eight exhibits were marked. The Tribunal on considering the First Information Report- Ex.P1, Sketch-Ex.P2, Motor Vehicle Inspector's report-Ex.P3 and the final report of the police-Ex.P4 held that the accident occurred due to the negligence of the lorry driver and therefore, as an insurer of the said lorry, the third respondent namely Royal Sundaram Alliance Insurance Company Limited is liable to pay compensation.

5. Regarding the income of the deceased, the Tribunal disbelieved the salary certificate-Ex.P8 produced by PW.2, since the PW.2 had no authorisation letter from the M/s Naga Arjuna Enterprises, where the deceased alleged to have been employed as Manager. Therefore, the Tribunal fixing the income of the deceased as Rs.1,000/- per month after deducting 1/3<sup>rd</sup> for his personal expenses, applied multiplier method and awarded a sum of Rs.1,00,000/- as compensation.

6. Not being satisfied with the said quantum of compensation, appeal is filed on the ground that the Tribunal ought not to have rejected Ex.P8-salary certificate and the evidence of PW.2, who has spoken about the employment and income capacity of the deceased. It was also contended that the Tribunal failed to take note of the future prospects of the deceased person. Hence, fair and just compensation should be given to the claimants for the untimely death of the deceased Srinivasalu.

7. Though the appeal was listed for final hearing on several occasions, there was no representation on behalf of the appellants and the respondents. However, taking note of the fact that the compensation awarded to the claimants being unfair and less, this Court after going through the records enhanced the compensation as below:-

Notional income of the deceased fixed at Rs.3,000/- per month with 10% future prospects. Since his age at the time of death was 52 years, multiplier factor 11 applied. There were three dependants on him, so 1/3<sup>rd</sup> of his notional income is deducted towards personal expenses. The total loss of income is



computed as  $(Rs.3000+300) \times \frac{2}{3} \times 11 \times 12 = Rs: 2,90,400/-$ . Besides in addition, Rs.15,000/- for Funeral Expenses; Rs.40,000/- for loss of consortium to the first claimant and Rs.15,000/- for the loss of love and affection to the 3<sup>rd</sup> claimant granted. Totally the compensation is enhanced to Rs.3,60,400/- from Rs.1,00,000/. The fourth respondent herein who is the widow of the deceased second claimant is not entitled for any compensation for the death of her father-in-law, since she never been a dependant on him.

8. Accordingly, the compensation of Rs.3,60,400/- shall be apportioned to the appellants 1 and 2/1<sup>st</sup> and 3<sup>rd</sup> claimants equally. The 3<sup>rd</sup> respondent/Insurance Company herein is directed to deposit the award amount as enhanced with interest at the rate of 7.5% per annum from the date of petition till the date of realization within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants 1 & 3/appellants are permitted to withdraw the same on appropriate petition.

9. In the result, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-  
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

rpl

To

The II Additional Subordinate Court,  
Erode.

C.M.A.No.2085 of 2017

GJ(CO)  
CB(21/09/2021)