



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.2377 of 2018
[Through Video Conferencing]

1.Pasupathynathan
2.P.Anbuchejian (Minor)
(Minor 2nd appellant is represented by his father /
natural guardian Pasupathynathan, 1st appellant herein)
... Appellants/Petitioners

Vs.

1.Mr.Pon.Venkatesan
2.The Manager,
National Insurance Company Ltd.,
No.638, Nattar Colony,
Attur Taluk, Salem District. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.03.2017 made in M.C.O.P.No.4286 of 2009 on the file of the Motor Accident Claims Tribunal, (Chief Small Causes Court), Chennai.

For Appellants	:	Mr.S.Udayakumar
For R1	:	Mr.C.Veeraraghavan
For R2	:	Mr.D.Baskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed questioning the quantum of compensation awarded by the Motor Accident Claims Tribunal, (Chief Small Causes Court), Chennai in the award dated 16.03.2017 made in M.C.O.P.No.4286 of 2009.

2.The claimants have come up with this appeal seeking enhancement of compensation. This is the case of fatal accident. On 01.07.2015 at about 09.00 a.m, the deceased Jothimani and her father-in-law were proceeding in a TVS XL on Salem-Cuddalore Main



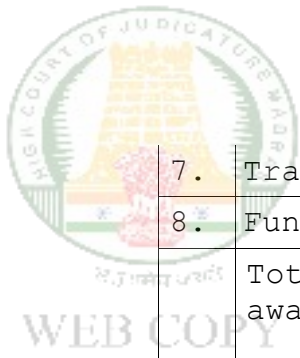
Road. When they were nearing Rettakurichi, a Lorry bearing Reg.No.TN-27-U-4460 driven by its driver in a rash and negligent manner, hit the motorcycle. In the impact, both Jothimani and her father-in-law sustained fatal injuries. The appellants are the husband and son of the deceased Jothimani. The first respondent is the owner and the second respondent is the insurer of the offending vehicle. Alleging that the accident had occurred due to the rash and negligent driving of the driver of the offending lorry, the claimants laid a claim petition claiming compensation of Rs.75,00,000/-.

3.Resisting the claim, the second respondent-Insurance Company filed their counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation. It was also contended that the claim is excessive and exorbitant.

4.To substantiate the case, on the side of the appellants/claimants, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P13 were marked. On the side of the second respondent-Insurance Company, no witness was examined and no document was marked.

5.The Tribunal, after considering the oral and documentary evidence, held that the driver of the first respondent's lorry was responsible for the accident and awarded compensation as follows:-

S. No	Description	Amount awarded by Tribunal (Rs)
1.	Salary	Rs.8,900/- p.m.
2.	50% future prospects	Rs.13,350/- [Rs.8,900 + Rs.4450]
3.	1/3 rd deducted personal expenses	Rs.8,900/- [Rs.13,350 - Rs.4450]
4.	Multiplier of '16' is applied	Rs.17,08,800/-[Rs.8,900 X 12 X 16]
5.	Loss of consortium to the 1 st appellant	Rs.50,000/-
6.	Loss of love and affection to the 1 st appellant Loss of love and affection to the 2 nd appellant	Rs.10,000/- Rs.25,000/-



7.	Transport charges	Rs.5,000/-
8.	Funeral Expenses	Rs.25,000/-
	Total compensation awarded	Rs.18,23,800/-

Aggrieved over the said award, the appellants/claimants filed the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellants would contend that since the amount awarded by the Tribunal is meager in all the heads, the claimants are entitled for higher compensation. He would further contend that at the time of accident, the deceased was aged about 34 years and hale and healthy and she was employed as Senior Grade Assistant at Panchayat Union Middle School and earned Rs.12,000/- per month. But the Tribunal without considering the age of the deceased and her educational qualification, fixed the monthly income at Rs.8,900/-, which is meager. Hence, the appellants seek for enhancement of compensation.

7.Per contra, Mr.D.Baskaran, learned counsel appearing for the 2nd respondent-Insurance Company contended that the deceased was a tortfeasor and hence, 2nd respondent is not liable to pay any compensation to the appellants. The accident had occurred only due to negligence of the deceased. The award of the Tribunal directing the 2nd respondent to pay a sum of Rs.18,23,800/- is not on merits. The appellants are not entitled to any compensation as claimed and the learned counsel prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondents and perused the entire materials placed on record.

9.Though the learned counsel appearing for the appellants/claimants has contended that the award is meager and sought enhancement, on perusal of the records, this Court finds that the Tribunal, on proper appreciation of evidence of Ex.P5, Pay Certificate of the deceased, has fixed the monthly income and adopting correct multiplier, awarded a just and reasonable compensation. Further, the quantum of compensation under remaining heads were fixed by the Tribunal by following the Judgments of the Hon'ble Supreme Court in the case of Sarala Verma and others vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1. I find no reason to interfere



with the conclusion reached by the Tribunal. This appeal has no merit.

10. For the foregoing reasons, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

ssi

To

1. The Chief Small Causes Judge,
Motor Accident Claims Tribunal,
Chennai.

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

+1cc to Mr.D.Bhaskaran, Advocate SR.No.65247

C.M.A.No.2377 of 2018

CA(CO)

CB(07/04/2022)