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CMA.No.1367 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2022

CORAM:

THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.1367 of 2018

1. K. Usha

W/o. Late. Kuppu Udaiyar @ Chinnathambi.

2. K. Vetrivel

S/o. Late. Kuppu Udaiyar @ Chinnathambi

3. K. Geetha

D/o. Late Kuppu Udaiyar @ Chinnathambi

Appellants

..

vs.

1. M/s. Sri Ganapathy Steel Private Limited,
S. No. 106/1, Attur Main Road,
Udaiyarpalayam,
Thammampatti Post,
Gangavalli Taluk.

2. M/s. New India Insurance Co. Ltd.,
Zonal Office-III,
151-A, Kizhakku Valli Road,
Madurai.

..Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and judgment dated 07.10.2017 passed by the Motor Accident Claims Tribunal/III Additional District Court, Salem, in M.C.O.P. No.315 of 2015 for enhancement of the award amount.



CMA.No.1367 of 2018

For Appellants : Mr.P. Jagadeesan
For R1 : Notice served, no appearance.
For R2 : Ms. R. Sree Vidhya

JUDGMENT

The appellants/claimants have filed this present Civil Miscellaneous Appeal seeking enhancement of the award granted in M.C.O.P. No.315 of 2015 passed by the learned III Additional District Judge, Motor Accident claims Tribunal, Salem.

2. The facts in brief are as follows:-

2.1. The appellants/claimants had sought a compensation of a sum of Rs.25,00,000/- for the death of one Kuppu Udaiyar, the husband of the 1st appellant and the father of the appellants 2 and 3 in a road accident.

2.2. It is their case that the said Kuppu Udaiyar was aged about 54 years at the time of his death and he was earning a monthly income of Rs.25,000/- through agricultural work and milk vending business. On 03.11.2014, at about 5 p.m., when the said Kuppu Udaiyar @ Chinnathambi tried to cross the Salem-Athur Main Road, the lorry



CMA.No.1367 of 2018

belonging to the 1st respondent driven by its driver in a rash and negligent manner and at a uncontrollable speed, had hit the deceased and on account of the impact, the said Kuppu Udaiyar died on the spot. Therefore, the appellants filed the claim petition before the Tribunal.

2.3. The 1st respondent, owner of the lorry, had not entered appearance and was set *ex-parte*. The Insurance Company had filed its counter alleging that the deceased Kuppu Udaiyar had contributed to the accident as he had crossed the four lane road, which he was not supposed to cross. The Insurance Company had denied the age, occupation and the income of the deceased Kuppu Udaiyar. The Insurance Company had stated that the act of the deceased in crossing the road suddenly was contrary to the Motor Vehicle Rules for pedestrians and therefore, the lorry driver cannot be singled out for negligence.

2.4. The Tribunal, after considering the evidence on record, held that the deceased was also negligent and therefore, apportioned the negligence equally on the deceased as well as the driver of the lorry. The Tribunal had fixed the notional monthly income of the deceased as Rs.5,000/- and after deducting 1/3rd towards personal expenses and



CMA.No.1367 of 2018

adopting a multiplier of 11 considering the age of the deceased, had arrived at a loss of income of Rs.4,40,000/-. After awarding amounts under the other conventional heads, a total sum of Rs.5,85,000/- has been awarded to the claimants. Since the deceased had also contributed to the accident, 50% contributory negligence was mulcted on him and after deducting the same, the Tribunal has awarded a sum of Rs.2,92,500/-. Aggrieved by this award, the appellants/claimants are before this Court.

3. Mr. P. Jagadeesan, learned counsel appearing on behalf of the appellants would question the correctness of the award on two grounds. One the mulcting of equal negligence on the deceased who was a pedestrian and also fixing just a sum of Rs.5,000/- as notional monthly income of the deceased, totally overlooking the fact that the deceased owns about 5 acres of land in which he was doing agricultural work and also the fact that he owns about 10 cows and was vending milk and milk products there from.

4. Per contra, Ms.R. Sree Vidya, learned counsel appearing on behalf of the Insurance Company would contend that the deceased by crossing the four lane track, where vehicles ply at a great speed, has been



CMA.No.1367 of 2018

very negligent and this has caused the accident. Therefore, the apportionment of the negligence equally on both the deceased and the driver of the 1st respondent lorry was very much in order. Further, though the appellants had contended that the deceased Kuppu Udaiyar owns 5 acres of land and owns 10 cows, there was nothing produced to prove the same. Therefore, fixing of the notional income at Rs.5,000/- was well in order.

5. Heard the learned counsel on both sides.

6. The unfortunate accident in which Kuppu Udaiyar died had taken place at about 5 p.m. It is no doubt true that the deceased had been very negligent in trying to cross the highway, where the vehicles' movement is very high. However, vehicles plying on the highway are also required to maintain a speed limit and the drivers plying on these roads have to be extra cautious about the persons and the cattle crossing the road all of a sudden. Apparently the driver of the lorry was driving at such a speed that he was not able to stop the vehicle, as a result of which, he had hit the deceased. The deceased by crossing the road at a place where no crossing was permitted has also contributed to the accident. However,



CMA.No.1367 of 2018

the apportionment of the negligence equally on both the deceased and the lorry driver is without any basis. The deceased being a pedestrian, a contributory negligence of 10% can be fixed upon him.

7. The appellants had pleaded that the deceased was carrying on agricultural activities and also doing milk business. The said factum has been denied by the respondents. The Tribunal has arrived at a notional income of Rs.5,000/- only on the basis of the age of the deceased. The accident has taken place in the year 2015. The wife of the deceased, who adduced evidence, has stated that her husband was engaged in Agricultural activities. Therefore, the notional income can be fixed at a sum of Rs.7,500/- per month, to which, 1/3 has to be deducted towards personal expenses. **The loss of income, therefore, would be Rs.6,60,000/- (7500 x 12 x 11 x 2/3).** It is also brought to the notice of this Court that the Tribunal has awarded a sum of Rs.50,000/- towards the loss of consortium for the wife, which has to be reduced to Rs.40,000/-. The compensation for the loss of love and affection to the 2nd petitioner has to be increased to Rs.40,000/- from Rs.25,000/- and the compensation under the head of love and affection to the 3rd petitioner has to be reduced to Rs.40,000/- from Rs.50,000/-. The Tribunal has not



CMA.No.1367 of 2018

awarded any amount under the head of loss of estate and a sum of Rs.15,000/- should be added under this head. Therefore, the modified award would be as follows:

<i>S. No</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>	<i>Award confirmed or enhanced or granted or reduced</i>
1.	Loss of Income	4,40,000/-	6,60,000/-	enhanced
2.	Funeral Expenses	15,000/-	15,000/-	confirmed
3.	Loss of consortium to the 1 st petitioner	50,000/-	40,000/-	Reduced
4.	Loss of love and affection to the 2nd petitioner	25,000/-	40,000/-	Enhanced
5.	Loss of love and affection to the 3rd petitioner	50,000/-	40,000/-	Reduced
6.	Transport charges	5,000/-	5,000/-	Confirmed
7.	Loss of estate	-	15,000/-	freshly granted
	TOTAL	5,85,000/--	8,15,000/-	
	Contributory negligence	50% on Rs.5,85,000/- is Rs.2,92,500/-	90% on Rs.8,15,000/- is Rs.7,33,500/-	Enhanced by Rs.4,41,000/-

Since the negligence has to be apportioned between the appellants and the Insurance Company in the ratio 10:90, **the amount of compensation payable by the Insurance Company would be a sum of Rs.7,33,500/-.**



CMA.No.1367 of 2018

8. Therefore, the Civil Miscellaneous Appeal is allowed and the award of the Tribunal be and hereby is enhanced to a sum of **Rs.7,33,500/-** (Rupees Seven lakhs thirty three thousand five hundred only) from Rs.2,92,500/- together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other aspects the award of the Tribunal is confirmed. The 2nd respondent/ insurance company is directed to deposit the said amount (Rs.7,33,500/-) to the credit of M.C.O.P.No.315 of 2015 on the file of the Motor Accident Claims Tribunal/III Additional District Court, Salem, together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment and thereafter recover the same from the owner of the vehicle. On such deposit, the appellants are permitted to withdraw the award amount so deposited, 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. The Tribunal shall not disburse the amounts until proof of payment of the Court fee is produced by the claimant failing which the Tribunal shall get a confirmation from this Court that the Court



CMA.No.1367 of 2018

fee has been paid. No costs.

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23.06.2022

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Index : Yes/No

Speaking / Non-speaking order



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CMA.No.1367 of 2018

P.T.ASHA, J.

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To,

Motor Accident Claims Tribunal (III Additional District Court),
Salem.

CMA.No.1367 of 2018

23.06.2022