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CMA.No.1162 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.1162 of 2017 and
C.M.P.No.20628 of 2016

1.Rukmani
2.N.Pradeep

... Appellants/ Petitioners

Vs

1. K.K.Mohan

2. M/s KPM Petroleum,
246/1-A2, Bathery Road,
Bitherkad, Bitherkad Post,
Gudalur, Nilgiris District.

3.The Branch Manager,
United India Insurance Company,
Branch Office at Noornal Buildings,
Mysore Road, Sulthans Bathery, Wayanad,
Kerala - 673592

... Respondents/ Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the present appeal award enhanced compensation in judgment and decree dated 31.07.2015 in MCOP No.96/2015 passed by the Motor Accident claims Tribunal (Special District Judge), Erode as prayed for in this Civil Miscellaneous Appeal.



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For Petitioner : M/s R.Nalliyappan
For Respondent : M/r. C.Paranthanan[R.3]
No Appearance [R.1 & R2]

JUDGEMENT

The mother and brother of one Rangraj who passed away in a road accident had filed M.C.O.P.No.96 of 2015 on the file of the Motor Accident Claims Tribunal Special Judge, Erode, seeking a compensation of Rs.59,25,000/-. The Tribunal had awarded a total sum of Rs.11,13,000/- and aggrieved by the same the present appeal has been filed.

2. It is the case of the petitioners that the deceased Rangraj was working as a Supervisor cum Accountant at V.M. Engineering Works, Coimbatore and earning a monthly income of Rs.15,000/-. On 30.12.2014 he was traveling as a pillion rider along with one Rubeshkumar, rider of the motor cycle bearing registration no.TN-40-E-8188 and while proceeding proceeding from Mettupalayam to Annur, when they neared Theramalayam, Kandasamy Thottam, a Tanker lorry bearing registration no.TN-43-Z-9102 driven by the 1st respondent in a rash and negligent manner, without



adhering the traffic rules and regulations and which attempted to overtake the preceding vehicle from the wrong side of the road had dashed against the motor cycle and due to the impact both the rider and the pillion were thrown out of the motor cycle and sustained grievous injuries to their head and both of them had died on the spot. The accident had occurred only on account of the rash and negligent driving of the 1st respondent.

3. The vehicle belonging to the 2nd respondent and was insured with the 3rd respondent. The 1st and 2nd respondents had entered appearance however they did not file their counter and were therefore set *ex parte*.

4. The 3rd respondent/Insurance company had filed a counter statement contending that the rider of the motor cycle in which the deceased was travelling had driven the vehicle rashly and negligently which had also contributed to the accident. The insurance company had put the appellants to strict proof that the rider of the motor cycle possessed a valid driving license and had a valid insurance policy cover and that the driver of the Tanker lorry should possess a valid permit and coverage of insurance and the driver who drove the same had a valid subsisting driving license.



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5. The Tribunal below held the negligence on the driver of the Tanker lorry and arrived at a compensation of a sum of Rs.11,13,000/-. Challenging the same the appellants are before this Court.

6. Mr.R.Nalliyappan, learned counsel appearing for the appellant would contend that the notional monthly income fixed was very low and considering the year of the accident a sum of Rs.12,000/- ought to have been taken as a notional monthly income. That apart, the appellant had not been granted any amount under the head of loss of estate and the amount granted under the head of loss of love and affection was not as per the Judgement reported in Pranay Sethi's Case - **2017 (16) SCC 680 - National Insurance Company Versus Pranay Sethi and another.**

7. Mr.C.Paranthanan, learned counsel appearing for the insurance company would submit that a reasonable notional income has been fixed by the Tribunal below and there is no necessity for enhancing the same. He would however concede that amounts under the head of love and affection and loss of estate has to be necessarily granted.



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WEB COPY 8. Heard both the learned counsels.

9. The educational qualifications of the deceased Rangraj appears to be promising and if he was alive he would be well placed and earning a good salary. The notional income fixed by the Tribunal below is very low, the same is enhanced to a sum of Rs.10,000/-. To this future prospects of 50% has to be added considering the age of the deceased which is 23 years at the time of his death. Since the petitioner is a bachelor 50% has to be kept apart for his personal expenses. Therefore, the monthly income that would be available for the 1st appellant/mother would be a sum of Rs.7,500/-. The multiplier which has to be adopted is '18'. Therefore, the amount under the head of loss of dependency would be $\text{Rs.7,500} \times 12 \times 18 = \text{Rs.16,20,000/-}$. Then no amounts has been granted under the head of loss of estate therefore, a sum of Rs.15,000/- has to be granted under this head. Under the head of funeral expenses a sum of Rs.25,000/- has been granted which has to be reduced to a sum of Rs.15,000/-. Under the head of loss of love and affection only a sum of Rs.25,000/- has been granted, the 1st appellant/ mother is alone entitled for a compensation, since the brother is not depending upon



the petitioner, therefore, a sum of Rs.40,000/- is granted under this head.

Therefore, the total compensation is now awarded by this Court is a sum of Rs.17,00,000/-. The 1st appellant/mother of the deceased is only entitled to the above sum. Therefore, the reworked compensation would be as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Funeral Expenditure	25,000/-	15,000/-	Reduced
2.	Transportation	10,000/-	10,000/-	Confirmed
3.	loss of love and affection (for mother)	25,000/-	40,000/-	Enhanced
4.	loss of dependency	10,53,000/-	16,20,000/-	Enhanced
5.	loss of estate	Nil	15,000/-	Granted
	TOTAL	11,13,000/-	17,00,000/-	Enhanced by Rs.5,87,000/-

10. Therefore, the Civil Miscellaneous Appeal is allowed and the award of the Tribunal be and hereby is enhanced to a sum of Rs.17,00,000/- from Rs.11,13,000/- 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 3rd respondent/ insurance company is directed to deposit the said amount (Rs.17,00,000 /-) to the credit of M.C.O.P.No.96 of



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2015 on the file of the Motor Accident Claims Tribunal, (Special District Judge), Erode 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. On such deposit being made, the 1st appellant/mother of the deceased is permitted to withdraw the amount now determined by this Court, along with interest and costs, after adjusting the amount if any already withdrawn. 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 fee has been paid. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

28.06.2022

Index : Yes/No
Internet: Yes/No
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To

1. The Motor Accident claims Tribunal (Special District Judge), Erode
2. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T. ASHA, J.

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