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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1375 of 2017

Sangavva

.. Appellant

Vs.

1. R.Thangavelu

2. L. & T Insurance Company Limited,
D.No.25 A2, Amit Town First Floor,
RS.Puram, Coimbatore Town,
Coimbatore District.

.. Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree, dated 30.01.2017 in MCOP No.75 of 2013 passed by the Motor Accidents Claims Tribunal (Sub Court) Harur.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.K.Vinod for R2
No appearance for R1

JUDGMENT

The appellant, who lost her son at the young age of 27 years, has filed the claim petition in MCOP No.75 of 2013 before the Motor Accident Claims Tribunal, Subordinate Court, Harur seeking compensation of a sum of Rs.10 lakhs. The Tribunal after adjudication, by an Award dated 30.01.2017, awarded a total sum of Rs.7,38,000/- as compensation. Contending that such amount awarded by the Tribunal is very low, the appellant/claimant has come forward with the present appeal seeking enhancement.

2. As per the claim petition, on 02.08.2012 the deceased Muthu, son of Ramappa, aged 27 years was travelling in connection with his business in an Omni Van bearing Registration No.TN 07 V 7479 from Harur to Trichy. When the Omni van reached Mopiripatti bus stand in Thirupattur to Harur Road at about 12.30 hours in the early morning, a lorry bearing Registration No.RJ 09 GB 2666 owned by the 1st respondent, was driven by its



driver in a rash and negligent manner and hit against the Omni Van. Due to the said collusion, the deceased Muthu suffered injuries in his vital parts of his body and immediately he was taken to Government Hospital, Harur and thereafter taken treatment at Government Hospital, Dharmapuri and subsequently at Government Hospital, Salem. In spite of treatment given in the said hospitals for about a month, he could not be saved, rather he succumbed to injuries. In connection with the accident, a case was registered against the driver of the lorry in Crime No.749 of 2012 on the file of the Harur Police station. As the appellant had lost her son, she filed the claim petition as mentioned above.

3. The claim petition was resisted by the respondent/Insurance Company by stating that it was the driver of the Omni van who had driven the vehicle in a rash and negligent manner and caused accident. The specific defence taken is that when the Omni Van had attempted to overtake the ongoing lorry, the driver of the lorry applied sudden break to avoid collusion. However, the driver of the Omni Van hit the lorry and caused accident and therefore, the driver of the lorry cannot be made responsible for the accident. Further, it is submitted that the claim petition is not maintainable inasmuch as the claimant did not implead the owner or insurer of the Omni Van. The Insurance Company also denied the age, avocation and the income of the deceased Muthu and prayed for dismissal of the claim petition.

4. Before the Tribunal, the claimant examined herself as PW1 and one Dr.Shivashanmugam was examined as PW2. Exs.P1 to P9 were marked. On the side of the respondents, one Jaganathan was examined as RW1 and one Manimaran was examined as RW2. Exs.R1 and R2 were marked.

5. The Tribunal upon appreciation of oral and documentary evidence has held that it was the driver of the lorry, who, due to his negligence, has caused the accident, in which the son of the claimant died. As far as the quantum, the Tribunal taken a sum of Rs.6,500/- as notional income of the deceased, deducted 50% thereof towards personal expenses and arrived at Rs.3,250/- per month. As such the annual income has been arrived at Rs.39,000/- and by applying multiplier 17, the Tribunal awarded a sum of Rs.6,63,000/- towards loss of dependency. The Tribunal has also awarded a sum of Rs.50,000/- towards love and affection, a sum of Rs.10,000/- towards funeral expenses and Rs.15,000/- towards transportation expenses. In all, a sum of Rs.7,38,000/- was awarded as compensation.

6. As against the liability fastened upon the Insurance Company, they have not filed any appeal before this Court. This



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12 It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant a just compensation more than the amount claimed by the claimants. Thus, the compensation awarded by the Tribunal is modified and re-calculated as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	6,63,000	14,28,000	Enhanced
2.	Loss of love and affection	50,000	-	Set aside
3	Filial Compensation	-	40,000	Awarded
3.	Funeral Expenses	10,000	15,000	Enhanced
4.	Transportation	15,000	15,000	Confirmed
5.	Loss of Estate	-	15,000	Awarded
	Total	Rs.7,38,000/-	Rs.15,13,000/-	Enhanced by Rs.7,75,000/-

13. In the result, the judgment and decree, dated 30.01.2017 made in M.C.O.P.No.75 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Court, Harur is modified. This Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.7,38,000/- is hereby enhanced to Rs.15,13,000/- (Rupees Fifteen Lakhs Thirteen Thousand only) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the Court fee, if any on the enhanced amount of compensation. 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 six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the amount deposited on filing proper application. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal (Sub Court)
Harur.

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+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.6711
+1cc to Mr.K.Vinod, Advocate, S.R.No.6356

C.M.A.No.1375 of 2017

SS (CO)
SB (01/07/2022)