



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.12.2021	DELIVERED ON: 28.02.2022
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.2464 of 2018

1. Malligeswari
 2. Gandhimathi
 3. Minor Preethi
 4. Minor Mowleeswaran,
- Appellants 3 and 4 represented by their
next friend / Guardian Mother, 1st appellant
5. Selambayee ..Appellants/Petitioners

Vs.

1. Sakthi Kiruba
2. Bharathi AXA General Insurance Company Ltd.,
Sriram Centre, No.118, Ground Floor,
PP Savadi, Theni Main Raod,
Madurai 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 19.09.2017 made in M.C.O.P.No.596 of 2016 on the file of the Motor Accident Claims Tribunal and Special District Judge, Salem.

For Appellants : Mr.S.P.Yuvaraj

For 2nd Respondent : Mr.S.Arunkumar

R1 : No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award, dated 19.09.2017 in M.C.O.P.No.596 of 2016 on the file of the Motor Accident Claims Tribunal and Special District Judge, Salem.

2.The appellants are claimants before the Tribunal in M.C.O.P.No.596 of 2016 on the file of the Motor Accident Claims Tribunal and Special District Judge, Salem. They filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Rathinam, who died in the accident that



took place on 14.02.2016. According to the claimants, on 14.02.2016 at about 7.00 pm, the deceased was riding Hero Passion pro motorcycle bearing registration No.TN 90 A 2740. On the extreme left side of the Salem to Kondalampatti main Road, towards Kondalampatti near Kondalampatti fly over Coimbatore privu road, a Car bearing Registration No.TN 60 L 3074 was proceeding in front of the two wheeler driven by the deceased and all of a sudden, the driver of the car without observing traffic rules and any signals, returned on the back side and hit against the two wheeler of the deceased, as a result of which, the deceased thrown out from the vehicle and he sustained head injuries and died on spot.

3.The Insurance Company filed a counter statement before the Tribunal denying the manner in which the accident had taken place. The Insurance Company also denied the age, avocation and other particulars furnished by the claimants and prayed for dismissal of the claim petition.

4.Before the the Tribunal, in order to sustain the averments made in the claim petition, the 1st claimant / wife of the deceased was examined as PW1 and one Shanmugam was examined as PW2 and Exs.P1 to P27 were marked on the side of the claimants. The respondents neither examined any witness nor produced any documents in support of their defence.

5.The Tribunal, after considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the Car, belonging to the first respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.17,04,000/- as compensation to the claimants.

6.Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation. The Second respondent Insurance Company has not filed any appeal in so far as it relates to the liability fixed upon them.

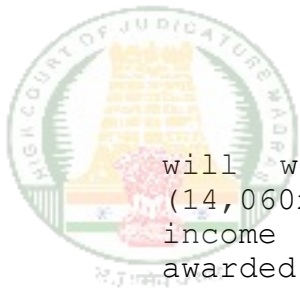
7.The learned counsel appearing for the appellants/claimants contended that the deceased was 46 years at the time of accident and he was working as an electrical contractor in Tamilnadu Electricity Borad and earning a sum of Rs.20,000/- p.m. It is the specific contention of the appellants that due to the death of the deceased, they have lost their sole bread winner of the family. But, the Tribunal has fixed a meagre sum of Rs.12,000/- as monthly income of the deceased instead, a sum of Rs.20,000/- ought to have been fixed as monthly income of the deceased. The Tribunal has not awarded any amount towards future prospects. The amounts granted by the Tribunal towards funeral



8. Per contra, the learned counsel appearing for the second respondent would only support the award passed by the Tribunal as reasonable and prayed for dismissal of the appeal.

10.As far as the compensation is concerned, the Tribunal concluded that there was no documentary evidence filed on behalf of the claimants to show that the deceased was earning a sum of Rs.20,000/- per month. However, the Tribunal had taken note of the documentary evidence filed on behalf of the claimants to show that the deceased has paid fee for his daughter to pursue college education. On the basis of the above document, the Tribunal fixed a sum of Rs.12,000/- p.m as notional income of the deceased. By applying multiplier 13, a sum of Rs.14,04,000/- was awarded towards loss of income. That apart, the Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, Rs.50,000/- towards loss of consortium to the first appellant, Rs.50,000/- towards loss of love and affection to the major daughter, Rs.75,000/- each to the 1st and 2nd minor claimants and Rs.25,000/- to the mother of the deceased who lost care and support from her son. Totally a sum of Rs.17,04,000/- was awarded as compensation.

11. Before the Tribunal, the claimants have marked as many as 27 documents, prominent among them are Exs.P12, P13, Payment of fee receipts made by the deceased for his children to pursue college education/school fee. Ex.P14 is the bank passbook of the wife of the deceased. Ex.P23 is the bank pass book of 5th claimant/mother of the deceased. The bank passbook of the minor claimants 3 and 4 were also marked as Ex.P25, P26. These documents shows the financial potentiality of the deceased to maintain the family. The accident had taken place on 14.02.2016. Therefore, having regard to the year of the accident, this Court is of the considered view that a sum of Rs.15,000/- can be fixed as notional income of the deceased and 25% is added towards future prospect, which would scale up the notional income to Rs.18,750/- (Rs.15,000/-+Rs.3,750/-). Taking note of the dependents of the deceased viz., wife and three children, $\frac{1}{4}$ share has to be deducted, if so, (Rs.18,750/4) Rs.4,690/- has to be given deduction towards personal expenses of the deceased himself, thereby, the monthly contribution of the deceased to the family



will work out to Rs.14,060/-. By applying multiplier 13, (14,060x12x13) a sum of Rs.21,93,360/- is awarded as loss of income of the deceased as against the sum of Rs.14,04,000/- awarded by the Tribunal.

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12. Similarly a sum of Rs.25,000/- awarded towards funeral expenses is reduced into Rs.15,000/- as in the opinion of this court, it is on the higher side. The amount granted by the Tribunal for loss of consortium to the first claimant is excessive and hence the same is reduced to Rs.40,000/-. as per the oft-quoted decision of the Honourable Supreme Court in Pranay Sethi case. Under the head "loss of love and affection", the Tribunal awarded a sum of Rs.75,000/- each to the minor children and Rs.50,000/- to the 2nd respondent/ major daughter and Rs.25,000/- to the mother of the deceased, which is modified to Rs.40,000/- each to the claimants 2 to 5, and totally a sum of Rs.1,60,000/- is granted for love and affection. The Tribunal has not awarded any amount towards loss of estate. Therefore, a sum of Rs.15,000/- is hereby granted towards loss of estate.

13. 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 as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Future loss of Dependency	14,04,000	21,93,360	enhanced
2.	Loss of Funeral Expenses	25,000	15,000	Reduced
3.	Loss of consortium	50,000	40,000	reduced
4.	Loss of Love and affection 2 nd claimant 3 rd and 4 th Claimant 5 th Claimant	50,000 1,50,000 25,000	1,60,000	Reduced
5.	Loss of estate	-	15,000	granted
	Total	Rs.17,04,000/- -	Rs.24,23,360/-	Enhanced by Rs.7,19,360/-



14. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.17,04,000/- is hereby enhanced to Rs.24,23,360 /- (Rupees Twenty four lakhs twenty three thousand three hundred and sixty only) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are 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 first appellant/wife of the deceased shall withdraw Rs.6,00,000/-, the second appellant/major daughter shall withdraw Rs.5,00,000/-, the fifth appellant/mother of the deceased shall withdraw Rs.3,50,000/-. The minor claimants/respondents 3 and 4 are entitled to the balance amount. The balance amount is directed to be deposited in a Nationalized Bank till they attain majority. The first appellant-mother is permitted to withdraw the accrued interest once in three months for the welfare of the minor children. No costs.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

1. The Special District Judge
Motor Accident Claims Tribunal
Salem

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

+1cc to Mr.S.P.Yuaraj, Advocate, S.R.No.13104

+1cc to M/s.S.Arunkumar, Advocate, S.R.No.13159

C.M.A.No.2464 of 2018

EV(CO)
RGA(27/04/2022)