



C.M.A.(MD)No.1347 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 15.11.2022

Delivered On : 02.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1347 of 2009

The Correspondent,

Mother Therasa Primary School,

L-12, Housing Board Colony,

Tenkasi.

.. Appellant / Respondent

Vs.

1.Vimala Kantha Ruby

2.J.Agnes Jeba Beula

3.J.Prem Anand Jesudoss

4.J.Ebenesar Sathia Prakash

.. Respondents 1 to 4 / Petitioners

5.Saravanan

.. 5th Respondent / 2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 22.07.2004, made in M.C.O.P.No.261 of 2002, on the file of the Motor Accident Claims Tribunal – Additional Sub Court, Tenkasi.

For Appellant

: Mr.C.Selvakumar

For Respondents

: Mr.M.P.Senthil for R1 to R4

: No appearance for R5



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 22.07.2004, made in M.C.O.P.No.261 of 2002, on the file of the Motor Accident Claims Tribunal – Additional Sub Court, Tenkasi. The appellant herein is the respondent, the respondents 1 to 4 herein are the claimants and the fifth respondent herein is the second respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition, in M.C.O.P.No.261 of 2002, is as follows:

On 14.08.2002, when the deceased - Jebadoss was travelling in a motorcycle, bearing Registration No.TN-72-Y-7995 from Kadaiyanallur to Kanakkapillai Valasai in a slow and cautious manner, keeping the extreme left of the road, at that time, a van bearing Registration No. DCT-2244 driving by its driver in a rash and negligent manner, dashed against the deceased. The deceased died on the spot. The deceased was working in a private institution and was earning Rs.4,815/- as salary, in addition to that he was working as a L.I.C agent. The petitioners are his dependents and they claimed a sum of Rs.10,00,000/- as compensation.



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3. A brief substance of the counter filed by the respondent in M.C.O.P.No.261 of 2002, is as follows:

The manner of accident is wrongly stated in the petition. The van driver drove the vehicle in a slow and cautious manner. It was the deceased, who crossed the road, all of a sudden, in a zig-zac manner and he invited the accident. The van driver was not responsible for the accident. The age, profession, income are to be proved.

4. 3 witnesses were examined and 11 documents were marked, on the side of the claimants. 1 witness was examined and no document was marked, on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs.3,94,000/- as compensation.

5. Against the award, the first respondent / appellant has filed this appeal on the following grounds:-

The Tribunal failed to consider that it was the deceased, who was responsible for the accident. The Tribunal is wrong in giving a findings that the deceased was earning Rs.5,000/- by running a motor driving school. The Tribunal failed to consider that there was no document to prove the income derived by the deceased as an L.I.C agent. The Tribunal is wrong in fixing the



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daily income of the deceased at Rs.180/-. The Tribunal is wrong in awarding Rs.5,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses. The award is excessive.

6. On the side of the appellant, it is stated the claimants have accepted that the monthly income of the deceased was Rs.4,815/-, but, the Tribunal is wrong in fixing the monthly income as Rs.5,400/-, which is excessive. It is further stated that the Tribunal has awarded Rs.5,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses, which are all excessive.

7. On the side of the respondents - claimants, it is stated that the Tribunal has awarded only Rs.5,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses and both the amount to be enhanced. The Tribunal failed to award any amount towards loss of estate and prayed compensation for loss of estate to be granted.

8. On the side of the respondents - claimants, it is further stated that even without filing a cross objection or appeal for enhancement of compensation, the Court can award fair compensation and prayed the award to be enhanced. A judgment of this Court reported in 2015-1-TNMAC-514 (The Managing



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Director, TNSTC, Villupuram V. Panchavarnam), is cited, wherein, it is stated as

follows:-

“7.Though the appeal has been filed by the Transport Corporation against the award of the Tribunal, this Court, suo motu, has enhanced the compensation to the tune of Rs.9 lakhs, following XLI Rule 33 CPC by re-appreciating the evidence on record and applying the correct law, as on date. What is to be awarded is just and reasonable compensation and therefore, this Court, even in the absence of appeal/cross-appeal by the claimants/respondents and even in the absence of the respondents, has enhanced the compensation.”

9. On the side of the respondents – claimants, another judgment of this Court reported in 2018-1-TNMAC-592 (Managing Director, State Express Transport Corporation Limited V. Radha), is cited, wherein, it is stated as follows:-

“9.Though the appeal has been preferred by the Transport Corporation, the facts and circumstances of the case, enables this Court to enhance the compensation awarded by the Tribunal from Rs. 14,57,000/- to Rs.17,83,600/- by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order XLI Rule 33 CPC and Section 151 CPC as well as Article 227 of the Constitution of India. Moreover, the provisions of Motor Vehicles Act are benevolent in nature and what



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is required to be awarded is just and reasonable compensation.

Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).”

10. On the basis of the evidence of P.W.1 and P.W.2 and on the basis of Ex.P1-copy of the F.I.R., Ex.P3-copy of the M.V.I.report, Ex.P4-copy of rough sketch, Ex.P5-observation mahazer, the Tribunal has fixed the responsibility on the van driver. R.W.1 - van driver has admitted his guilt and paid the fine. In view of the above circumstances, it is decided that the accident has happened only due to the rash and negligent driving of the van driver.

11. In the claim petition, it is stated that the deceased was working as a Fitter in a private company and was earning Rs.4,815/-. The salary certificate was marked as Ex.P11. It is stated that the deceased was running a driving school and the licence for running the school was marked as Ex.P7. A certificate to that effect was marked as Ex.P10. The claimants claimed that the deceased was earning Rs.5,000/- by running the driving school. It is further stated that the deceased was an L.I.C agent, the ID certificate issued by the L.I.C was marked as



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Ex.P9. From Ex.P7 and Ex.P10, it is clear that the deceased was running a driving school. There is no proof of income from the driving school. Ex.P9 reveals that the deceased was an L.I.C agent, but, the quantum of income received from the L.I.C was not proved. The bank statement or the income certificate from the L.I.C were not filed.

12. It is stated that the deceased was about to retire in 2 years, from the date of accident. The ledger, in support of monthly salary, was not produced by P.W.3. Hence, the salary certificate is not wholly reliable. Considering the documents on the side of the claimants, the monthly income of the deceased is fixed as Rs.4,500/-. After deducting 1/4th for his own expenses, the deceased might have contributed Rs.3,375/- for his family members. The age of the deceased at the time of accident was 57 years and multiplier '9' is applicable. By applying multiplier '9', it is decided that the claimants are entitled to Rs. 3,64,500/- towards loss of income.

13. The Tribunal has awarded Rs.5,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses and the same is enhanced to Rs.10,000/- towards loss of love and affection and Rs.10,000/- towards funeral expenses. The claimants are entitled to Rs.9,000/- towards loss of estate and



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Rs.500/- towards loss of articles. In total, the claimants are entitled to Rs.

3,94,000/- as compensation.

14. The total compensation is calculated as follows:-

Loss of income	:	Rs. 3,64,500/-
Loss of love and affection	:	Rs. 10,000/-
Funeral expenses	:	Rs. 10,000/-
Loss of estate	:	Rs. 9,000/-
Loss of articles	:	Rs. 500/-
Total compensation	:	 Rs. 3,94,000/-

15. It is seen that the Tribunal has fixed the rate of interest at 9% p.a., which is excessive and the interest is hereby reduced to 7.5% p.a.

16. Hence, this Appeal is partly allowed.

(i) The claimants are entitled to Rs.3,94,000/- as compensation.

(ii) The **appellant** is directed to deposit the entire compensation of Rs.3,94,000/-(if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.



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WEB COPY (iii) On such deposit being made by the appellants, the respondents 1 to 4 herein / claimants are permitted to withdraw their shares as apportioned by the Tribunal with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The claimants are not entitled for interest for the default period, if there is any. No Costs.

02.12.2022

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Additional Sub Court,
Motor Accident Claims Tribunal
Tenkasi.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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