



C.M.A.No.3963 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 21.02.2023

CORAM:

THE HONOURABLE Mr. JUSTICE A.A.NAKKIRAN

C.M.A.No. 3963 of 2019

and

C.M.P.No. 6664 of 2019

1.Tamilselvi
2.Sangeetha
3.Kathirvel

Marayee (died)
Arthanari (died)

... Appellants/Claimants

Vs.

1.N.Narasan

2.P.Rajendran

3.The National Insurance Company Limited,
Branch Office,
Mettur Dam,
Salem District.

... Respondents/Respondents



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Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 14.07.2016 in M.C.O.P.No.66 of 2011 on the file of the learned Subordinate Judge, Motor Accidents Claims Tribunal, Mettur Dam, Salem District.

For Appellants : Mr.M.R.Jothimanian

For Respondents : Mr.J.Charles for R3

No appearance for R1 and R2

JUDGMENT

The appellants have filed the above appeal aggrieved by the very meagre compensation that has been granted by the learned Subordinate Judge, Motor Accidents Claims Tribunal, Mettur Dam, Salem District, in M.C.O.P.No.66 of 2011. The claimants have filed the above appeal seeking an enhancement of the compensation granted to the claimants.



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2.It is the case of the claimants who are the wife, children and parents of the deceased Muthusamy that the deceased aged 40 years was working as a mason and building contract work earning a monthly income of Rs.30,000/-. On 13.09.2021 about 07.05 P.M., while he was riding his bicycle on the extreme left side on Omalur to Mecheri Main Road, near Kolkaranur Pirivu, a Tipper Lorry bearing Registration No.TN-52Y-6099 came from the opposite direction and dashed against the deceased and the deceased was succumbed on the spot. The deceased was a sole bread winner of his family. The accident had taken place only on account of the rash and negligent driving of the 1st respondent. The 2nd respondent as the owner of the vehicle and the 3rd respondent as the insurer of the vehicle, they are liable to pay a sum of Rs.20,00,000/- as compensation for the death of the deceased Muthusamy.



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3.The 1st and 2nd respondents remained absent and was set *ex parte*.

The 3rd respondent Insurance Company had filed a counter statement questioning the age, income and avocation of the deceased and also denying the manner of the accident. They had also questioned as to whether the driver of the tipper lorry was in possession of a valid driving license.

4.The Tribunal after considering the evidence on record came to a conclusion that the accident was occurred due to rash and negligent driving of the 1st respondent. Ultimately, the Tribunal has awarded a sum of Rs.4,78,750/- towards compensation with interest @ 7.5% per annum from the date of petition till the date of realisation to the



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claimants 1 to 3. Challenging the same, the claimants are before this Court.

5.The learned counsel appearing for the appellants/claimants would submit that the Tribunal has erred in fixing the income of just Rs.6,750/- totally overlooking the fact that the deceased who was a mason and building contract job work could earn over a sum of Rs.30,000/- per month. He would submit that the accident was occurred due to the rash and negligent driving of the 1st respondent. He would submit that very low amounts have been granted under various heads and therefore, the Award has to be enhanced.

6.Per contra, the learned counsel appearing for the 3rd respondent would submit that this is a very reasonable award and does not warrant a reconsideration.



7. Heard the learned counsel appearing on either side and perused the papers.

8. Admittedly, the deceased was a mason and also doing building contract work. As per the decision of the Hon'ble Supreme Court in **Neeta, W/o. Kallappa Kadolkar and others v. Divisional Manager, MSRTC, Kolhapur [2015 (1) TN MAC 161 (SC)]**, the notional income can be enhanced to a sum of Rs.12,000/- per month to which future prospects of 40% is to be added. Therefore, the monthly income would come to Rs.16,800/-. The annual income would work out to a sum of Rs.2,01,600/- ($\text{Rs.16,800/-} \times 12 = \text{Rs.2,01,600/-}$). After deducting 1/3rd amount towards his personal expenses, the annual contribution to the family would be a sum of Rs.1,34,400/-. Considering his age, the appropriate multiplier to be adopted is 15. Therefore, the loss of dependency to the family would be a sum of Rs.15,12,000/- ($\text{Rs.1,34,400/-} \times 15 = \text{Rs.20,16,000/-}$). The appellants 2 and 3/claimants 2 and 3 are entitled to a sum of Rs.40,000/- each



towards loss of love and affection. Therefore, a sum of Rs.80,000/- is granted under the head of loss of love and affection to the children.

The Tribunal has also granted a sum of Rs.1,00,000/- towards loss of consortium which has to be reduced to a sum of Rs.40,000/-.

Therefore, the amount under the head of loss of consortium is reduced to a sum of Rs.40,000/-. A sum of Rs.5,000/- granted under the head of transportation is enhanced to a sum of Rs.15,000/-. Rs.15,000/- has to be granted under the head of funeral expenses as against a sum of Rs.25,000/- awarded. The enhanced compensation would be a sum of Rs.21,66,000/-. Therefore, taking into consideration the above aspects, the modified amount is 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.	Loss of dependency	Rs.3,03,750/ -	Rs.20,16,000/ -	Enhanced
2.	Loss of consortium	Rs.1,00,000/	Rs.40,000/-	Reduced



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
		-		
3.	Loss of love and affection to the two children (Rs.40,000/- x 2)	Rs.45,000/-	80,000/-	Enhanced
4.	Funeral expenses	Rs.25,000/-	Rs.15,000/-	Reduced
5.	Transportation	Rs.5,000/-	Rs.15,000/-	Enhanced
	TOTAL	Rs.4,78,750/-	Rs.21,66,000/-	
		-	-	

9. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The 3rd respondent/Insurance Company is directed to deposit the entire compensation amount of Rs.21,66,000/- with interest @7.5% per annum, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.No.66 of 2011 on the file of the learned Subordinate Judge, Motor Accidents Claims Tribunal, Mettur Dam, Salem District, within a period of eight weeks from the date of receipt of a copy of



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this order, if not deposited earlier. On such deposit, the claimants 1 to 3 are permitted to withdraw the entire award amount with proportionate accrued interest and costs as apportioned by the Tribunal, by making necessary applications. TDS is not applicable for the victim compensation.

The claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimants. No costs. Consequently, connected Miscellaneous Petition is closed.

21.02.2023

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The Subordinate Judge,
Motor Accidents Claims Tribunal,

9/11



Mettur Dam,
Salem District.

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A.A.NAKKIRAN, J,

mps

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