



C.M.A. No. 1218 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1218 of 2021

1. Meenakshi
2. Gayathiri
3. Anandan
4. Rajasekaran ... Appellants / Petitioners

Vs.

1. S. Saradharam Builders
2. Manager,
Oriental Insurance Company Ltd.,
Chennai. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 13.08.2019 passed in M.C.O.P. No. 3 of 2016 on the file of the II Additional District and Sessions Judge, Motor Accident Claims Tribunal, Chidambaram.

For Appellants : M/s. A. Murugan
For R1 : No Appearance
For R2 : M/s. M. Krishnamoorthy



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JUDGMENT

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This appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No. 3 of 2016 on the file of the II Additional District and Sessions Judge, Motor Accident Claims Tribunal, Chidambaram, dated 13.08.2019, wherein the Tribunal has awarded a total compensation for a sum of Rs.7,37,755/- to the claimants along with the interest @ 7.5% per annum from the date of filing of claim petition till the date of realization.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. The claimants herein are the wife, daughter and sons of the deceased Natesan and their case is that on 15.10.2015 at about 06:30 PM, the deceased has travelled as a pillion rider in a two wheeler bearing Registration No. PY-01-AW-8267, which was ridden by Sabarison. At that time, a lorry bearing Registration No.TN-31-AW-4455, driven by its driver in a rash and negligent manner dashed against the two wheeler in which the deceased has travelled as a pillion driver and resulted in accident. Due to



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this, the driver of the two wheeler (Sabarison) and the deceased (Natesan) have sustained grievous injuries. A criminal case in Cr.No.283 of 2015 U/s. 279, 337 and 304A IPC was registered against the driver of the offending lorry on the file of Annamalai Nagar Police Station. For the injuries sustained, the deceased Natesan - first petitioner has filed a claim petition against the respondents seeking compensation for a sum of Rs.20,00,000/- under section 166(1) of the Motor Vehicles Act. Even though, the deceased Natesan has taken continuous treatment for the injuries sustained, but died on 07.02.2016. His dependents have impleaded as claimants.

4. The first respondent is the owner and the second respondent is the insurer of the lorry bearing Registration No.TN-31-AW-4455. The first respondent has not contested the claim before the Tribunal. The second respondent - Insurance company filed a counter and denied all the allegations made in the claim petition and contended that the accident was taken place only due to the negligent act on the part of the rider of the two wheeler bearing Registration No. PY-01-AW-8267. The insurance company also contended that the said lorry was not insured with the insurance company and the driver of the lorry and the rider of the two wheeler has not possessed a valid driving licence at the time of accident. The insurance



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company also contended that the claim petition does not included the owner and insurer of the two wheeler bearing Registration No.PY-01-AW-8267, hence petition is not maintainable and the compensation claimed under various heads is on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.5 were examined and Exs.P.1 to P.26 were marked, on the side of the respondent, no witnesses were examined and no exhibits were marked.

6. Based on the evidence placed on record, the Tribunal in point Nos.1 and 2, has held that, the rash and negligent driving of the driver of the lorry bearing Registration No.TN-31-AW-4455 is responsible for the accident and also held that the first and the second respondents are liable to pay the compensation to the claimants. In point no.3, the Tribunal has quantified and granted a compensation for a sum of Rs.7,37,755/- to the claimants along with the interest @ 7.5% per annum from the date of filing of claim petition till the date of realization.



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7. Aggrieved over the award, the claimants have filed this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimants has submitted that the deceased Natesan was aged about 59 years at the time of accident but the Tribunal has not properly fixed the notional income of the deceased and the quantum of compensation awarded under other heads is also on the lower side. Hence, prays to enhance the quantum of compensation.

9. Per contra, the learned counsel appearing for the insurance company has submitted that the deceased was not died due to the injuries sustained by him during the accident, the deceased was already prone to Urinary Bladder Cancer, hence he was not in a position to earn any income, so the notional income and other compensation awarded under various heads fixed by the Tribunal is just, hence prays to confirm the same.

10. Heard the submissions made on both sides and perused the materials available on record:



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11. Originally, the claim petition was filed by the deceased Natesan himself, while he was alive, however, the deceased Natesan was died on 07.02.2016 for the illness suffered due to the injuries sustained by him during the accident. Before the Tribunal, to prove the death of the deceased, the claimants have examined P.W.4, the Doctor from Sundaram Hospital, Tiruchy, who has categorically deposed about the nature of the injuries sustained by the deceased in the accident, including three grievous injuries. He also stated that due to the injuries sustained, the deceased has succumbed. Based on this evidence, the Tribunal has concluded, even though, the deceased was a cancer patient, he died only due to the injuries sustained by him in the accident. The insurance company has not come forward to challenge this finding of the Tribunal and same is binding on them.

12. Before the Tribunal, it was argued that the deceased had two acres of land and also involved in various other regular works and earned a sum of Rs.20,000 per month. But claimants have not been able to prove the same either by any witness nor producing any documentary evidences. In this case, the deceased was a sick person, who suffered from Urinary



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Bladder Cancer but, on this ground alone it could not be held that he is non-earning member. Since, there is no evidence placed on record to prove the case of the claimants that the deceased was earning Rs.20,000/- per month, the Tribunal has fixed the monthly notional income of the deceased as Rs.6,000/-. This Court is of the view that the notional income fixed by the Tribunal is on the lower side and is inclined to modify the same to Rs.10,000 per month.

13. The Tribunal has rightly followed the dictum as laid down in *National Insurance Co. Ltd., vs. Pranay Sethi case* reported in **2017(2) TN MAC 609 (SC)** and fixed 10% as future prospectus and as per *Sarla Verma and others Vs. Delhi Transport Corporation and another* reported in **2009 ACJ 1298 SC : 2009 (6) SCC 121**, the multiplier is fixed as '9' by considering the age of the deceased at the time of the accident. On perusal of the evidence placed on record, the deceased is aged about 59 years at the time of accident, hence, this Court finds no infirmity in the above fixing of future prospectus and multiplier adopted by the Tribunal and hence, confirms the same. After deducting one-fourth (1/4) of his monthly income towards his personal and living expenses, the compensation under loss of



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dependency is assessed as follows:

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Total income: 10,000 + (10% of 10,000) = Rs.11,000/-

After Deduction (1/4) of the total salary = Rs. 8,250/-

Loss of dependency = 8,250 x 12 x 9 = **Rs.8,91,000/-**

14. The Tribunal has awarded Rs.25,000/- under the head loss of consortium and Rs.1,00,000/- under the head love and affection. As per the Hon'ble Apex Court in *Magma General Insurance Co. Ltd., vs Nanu Ram [2018 ACJ 2018]*, all the claimants herein are entitled to compensation under the head loss of consortium. Hence, this Court is inclined to award compensation under the head loss of consortium to the claimants, who are the wife and children of the deceased Natesan. This consortium includes loss of love and affection, as held by the Hon'ble Apex Court in three Judge Bench judgment reported as *United India Insurance Co. Limited v. Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11 SCC 780]*. Accordingly, the second petitioner/ claimant, who is the wife of the deceased Natesan is awarded Rs.40,000/- under loss of spouse consortium and the claimants 2 to 4, who are the daughter and sons of the deceased are entitled to Rs.40,000/- each under loss of parental consortium.



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15. With respect to compensation awarded vide other heads are concerned, the funeral expenses of Rs.7,000/- awarded by the Tribunal is considered to be on lower side and the same is enhanced to Rs.15,000/-. The Tribunal has awarded Rs.61,155/- as medical expenses based on the medical bills placed on record and also awarded Rs.10,000/- towards transportation expenses, since the deceased had undergone treatment till his death. This Court is inclined to confirm the same.

16. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of spouse consortium	25,000/-	40,000/-	Enhanced
2.	Medical expenses	61,155/-	61,155/-	Confirmed
3.	Loss of Love and Affection	1,00,000/-	---	Rejected
4.	Funeral Expenses	7,000/-	15,000/-	Enhanced
5.	Loss of Income	5,34,600/-	8,91,000/-	Enhanced
6.	Transportation expenses	10,000/-	10,000/-	Confirmed
7.	Loss of parental Consortium	---	1,20,000/-	Granted
	Compensation Awarded	7,37,755/-	11,37,155/-	Enhanced



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16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,37,000/- is hereby enhanced to **Rs.11,37,155/- [Rupees Eleven Lakhs Thirty Seven Thousand One Hundred and Fifty Five only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of realization, excluding the default period, if any. The second respondent – insurance company is directed to deposit the amount awarded 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 to the credit of M.C.O.P. No.3 of 2016 on the file of the II Additional District & Sessions Judge, Motor Accidents Claims Tribunal, Chidambaram. On such deposit, the appellants/ claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/ claimants are directed to pay the necessary Court fee, if any, on the enhanced



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compensation. There shall be no order as to costs in the present appeal.

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The II Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Chidambaram.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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