



C.M.A.No.1129 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

**CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD**

C.M.A.No.1129 of 2016

1.Anjammal
2.Murugesan
3.Prema
4.Kamaraj

... Appellants / Petitioners

Vs.

1.Gowthu Maraicar
2.Haja
3.The United India Insurance Company Ltd.,
Karaikal, rep. by its Branch Manager,
Having its office at No.2 Church Street,
Karaikal.

... Respondents / Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and Decree passed by the Motor Accident Claims Tribunal -cum- District Judge at Karaikal in M.A.C.T.O.P.No.184 of 2013 dated 25.11.2015.

For Appellants : Mr.Sai Krishnan

For Respondents 1 & 2 : No such person & also
Ex-parte in the Lower Court itself



C.M.A.No.1129 of 2016

For Respondent 3 : Mr.J.Chandran

WEB COPY

J U D G M E N T

This Civil Miscellaneous Appeal No.1129 of 2016 has been filed to enhance the compensation amount awarded in the judgment and decree dated 25.11.2015 made in M.A.C.T.O.P.No.184 of 2013 on the file of Motor Accident Claims Tribunal cum District Judge at Karaikal with interest and cost by allowing this Civil Miscellaneous Appeal.

2. The facts of the case in a nutshell:

On 07.03.2013 by 19.00 hours at Nagore Main Road, Keezha Vanjore, near Raja Oil Mill, when one Kuppusamy was going by walk from north to south direction on the extreme left side of the road, so slowly and carefully, at the same direction, a motor cycle driven by the first respondent bearing Reg.No.Py-02 J 8278 in a rash and negligent manner hit on the said Kuppusamy. Due to the impact, the said Kuppusamy sustained serious head injuries and admitted in G.H. Puducherry till 10.03.2013 and thereafter, he was referred to higher institution and admitted in Tanjore Government Medical College Hospital, but, as the treatment was not successful, the



injured Kuppusamy died on 20.03.2013. The deceased was employed as Mason Assistant and got a salary of Rs.400/- per day. Due to the death of the deceased Kuppusamy, the first appellant being his wife, second and fourth appellant being his sons and the third appellant being his daughter suffered a lot economically and lost their love and affection from the deceased. The accident occurred only due to the negligence of the first respondent alone and hence, the first respondent being rider of the motor cycle, second respondent being the owner of the motor cycle and the third respondent being the insurer are jointly and severally liable to pay a compensation. Hence, the appellants filed a claim petition claiming a compensation of a sum of Rs.15,00,000/-.

3. Learned counsel for the appellants submitted that Kuppusamy (Deceased), who is the father of appellants 2 to 4 was worked as a Mason Assistant and earned a sum of Rs.400/- per day and Rs.50/- as batta. To substantiate this claim, he has produced a salary certificate dated 05.02.2015 issued by P.W.2 and the same was marked as Ex.P.13. Moreover, there are four dependents, who are the legal heirs of the deceased Kuppusamy and the deduction is 1/3, which is on the higher side.



WEB COPY

4. Learned counsel for the appellants further submitted that the salary has to be fixed as Rs.10,000/- per month and the compensation should have been awarded by taking into consideration of the same, but the Tribunal has calculated the salary of the deceased at Rs.6,000/- per month and awarded a total compensation of a sum of Rs.8,50,000/- on 25.11.2015, which is not sustainable. Aggrieved by the award dated 25.11.2015, the appellants who are the legal heirs of the deceased Kuppusamy have come forward with this present Civil Miscellaneous Appeal, before this Court.

5. In support of his submission, the learned counsel for the appellants has relied upon the following decisions of this Court and the same is reads as follows:

(i) In the case of ***The Divisional Manager, Oriental Insurance Co.Ltd., Vs. Ganesan and others*** made in ***C.M.A.No.69 of 2016*** dated ***20.03.2019***, it was held that:

“11. As far as the quantum of compensation is concerned, though it is the contention of Mr.S.Arunkumar, learned counsel for the appellant, that in the absence of any proof regarding monthly income, the Tribunal fixed



WEB COPY



C.M.A.No.1129 of 2016

Rs.9000/- as the monthly income of the deceased, which is on the higher side and therefore, the same has to be reduced, the Honourable Supreme Court, in the judgment rendered in Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627, fixed Rs.6500/- as the monthly income for a vegetable vendor, who got injured in the accident, which occurred in 2008 whereas in the case on hand, the accident had occurred on 10.12.2012. Therefore, the Tribunal was right in determining the monthly income at Rs.9000/- and the same is confirmed.”

(ii) In the case of ***Saritha and others Vs. Siva and another*** made in ***C.M.A.No.3567 of 2019*** dated ***27.08.2020***, the relevant paragraph is read as under:

“23. In the present case on hand, admittedly, the deceased was born during the year 1974 and at the time of accident, he had crossed 40 years of age. When he had crossed 40 years of age, then he comes within the age group of 40 years to 50 years and therefore, 25% future prospects are permissible and the same is to be granted. Accordingly, the monthly income of the deceased is to be enhanced to Rs.12,000/-. Taking into consideration, the deceased was working as a Building Mason in the rural area and 25% of future prospects is to be added towards the loss of income and another Rs.10,000/- is to be granted towards transportation charges. The compensation granted under the



WEB COPY



C.M.A.No.1129 of 2016

other heads are also be modified with reference to the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in the case of Pranay Sethi (cited supra). Accordingly, the total compensation of Rs.14,03,000/- awarded by the Tribunal is modified as 22,25,000/-."

6. First and second respondents have been set ex-parte in the Tribunal itself. Hence, the third respondent is the only contesting respondent in this case.

7. Learned counsel appearing for the third respondent/Insurance Company submitted that the first respondent has no valid and effective driving licence at the time of accident and the said vehicle has no valid insurance coverage with the third respondent at the time of accident and also denied the legal heirship and dependency claimed by the appellants. The death of the deceased Kuppusamy is not due to the alleged accident and the deceased has not sustained any injury in the road accident and he was in an intoxicated manner at the time of alleged accident and died after 13 days due to senility. The age, avocation and income of the deceased has to be proved through proper documentary evidence. Moreover, the age of the deceased



was 50 and his wife was aged about 52 and other dependents are major and aged about 34, 28 and 24 respectively.

8. Heard the learned counsel for the appellants and the learned counsel appearing for the third respondent and perused the materials available on record.

9. On perusal of Ex.P.1/F.I.R reveals that a criminal case in Cr.No.21/2013 was registered against the first respondent in T.R.Pattinam Police Station, Karaikal under Section 279, 337 I.P.C for negligent riding of the vehicle. Ex.P.4 / accident inspection report also fortifies the same. Thus, it is prima facie held by the Tribunal based on the evidence and documentary evidence that the accident was caused due to the rash and negligent driving of the first respondent.

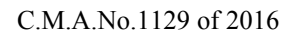
10. In regard to the insurance coverage for the accident involved vehicle, which belongs to the second respondent, as per Ex.P.3, it is evident that the second respondent vehicle has valid insurance coverage as on the



date of occurrence. Therefore, the third respondent/Insurance Company, being the insurer of the second respondent vehicle is liable to pay the compensation to the appellants.

11. The deceased was worked as Mason Assistant with one Anthoniraj, a building contractor, who has been examined as P.W.2. He issued Ex.P.13/Salary certificate. As per Ex.P.13, the deceased earned Rs.400/- per day along with Rs.50/- as daily batta. Since, the masonry work is not permanent one and his monthly salary was fixed at Rs.6,000/- by the Tribunal. As per Ex.P.12/Family ration card and Ex.P.13/Post mortem certificate, the age of the deceased was mentioned as 50 years. Further, Ex.P.12 was issued in the year 2005 and Ex.P.13 was issued in the year 2015. Since there was no inconsistency in the material records, the Tribunal has fixed the age of the deceased as above 50 years and applied the multiplier as '11' to his age as per Sarala Verma's case reported in 2009 2 TNMAC 1.

12. As per the evidence of P.W.1, the deceased survived with 4 dependents. Hence, the Tribunal deducted 1/3rd as loss of dependency. So,



13. In regard to the salary of the deceased Kuppusamy, he was earning a sum of Rs.450/- per day, which is evident from the salary certificate, marked as Ex.P.13 submitted by the employer. If this is taken into account, then the monthly salary of the deceased will be a sum of Rs.13,500/-. Moreover, the accident has occurred in the year 2013 and the daily earning of the deceased is quite reasonable at that time and it is not exorbitant. Hence, this Court fix the monthly income of the deceased notionally as Rs.8000/-. So, the loss of income is calculated as $\text{Rs.}8000 \times 12 \times 11 = \text{Rs.}10,56,000/-$. Out of which, $\frac{1}{3}^{\text{rd}}$ of his income should be deducted from the total loss of income i.e., $\text{Rs.}10,56,000 - \text{Rs.}3,52,000 = \text{Rs.}7,04,000/-$. Therefore, a sum of Rs.5,28,000/- awarded to the appellants as pecuniary loss is enhanced to Rs.7,04,000/-.

14. The Tribunal has awarded a sum of Rs.2,00,000/- towards love and



affection (Rs.50,000/- each to all the appellants). Further a sum of Rs.22,000/- is awarded towards funeral expenses including transportation charges. Moreover, a sum of Rs.1,00,000/- is awarded towards loss of consortium to the first appellant only is reasonable and it does not want any interference by this Court. In regard to the future prospects, the Tribunal has rightly held that since the deceased was not in a permanent job, his future prospects could not be considered.

15. Considering the above facts and circumstances and the ratio laid down by the Hon'ble Apex Court and Division Bench of this Court, the award of sum of Rs.5,28,000/- towards the compensation for pecuniary loss alone by the Tribunal is unreasonable and unacceptable to this Court. Therefore, the compensation awarded to the appellants under this head alone is interfered with by this Court for the reasons already stated supra. Thus, the total compensation awarded by the Tribunal is modified to Rs.10,26,000/- from Rs.8,50,000/-. The details of which are as follows:

<i>Head</i>	<i>Compensation awarded by the Tribunal (Rs.)</i>	<i>Compensation enhanced by this Court (Rs.)</i>
Compensation for Pecuniary loss after deducting 1/3 rd	5,28,000/-	7,04,000/-



WEB COPY

share of the deceased as living and personal expenses (Rs.6,000x12x11=7,92,000 - 2,64,000/-)		
Towards Funeral expenses (including transportation to Kendrapara District)	22,000/-	22,000/-
Towards Loss of love and affection (Rs.50,000 X 4)	2,00,000/-	2,00,000/-
Towards loss of consortium to 1 st petitioner/appellant only	1,00,000/-	1,00,000/-
Total	8,50,000/-	10,26,000/-

16. In fine, this appeal is partly allowed. The third respondent/Insurance Company is directed to deposit the aforesaid modified compensation amount fixed by this Court with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment to the credit of M.A.C.T.O.P.No.184 of 2013 on the file of Motor Accidents Claims Tribunal cum District Judge, Karaikal. The 1st appellant is awarded a sum of Rs.3,00,000/- and appellants 2 to 4 was awarded a sum of Rs.2,42,000/- each and permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any already withdrawn by making necessary



C.M.A.No.1129 of 2016

application before the Tribunal. No costs.

WEB COPY

07.02.2023

vm

Index : Yes/No

Speaking Order : Yes/No

Neutral Judgment : Yes/No

To:

1. Motor Accident Claims Tribunal -cum-
District Judge,
Karaikal.

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

J.SATHYA NARAYANA PRASAD,J.

vm



WEB COPY



C.M.A.No.1129 of 2016

C.M.A.No.1129 of 2016

07.02.2023

Page No.13 of 13