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C.M.A.No.3592 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.03.2023

Pronounced on : 31.07.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.3592 of 2013

1.Thangayammal
2.Umamaheswari

... Appellants

vs.

1.K.Raju
2.V.Sumathi
3.The New India Assurance Co. Ltd.,
1st Floor, Amman Complex,
No.1360, E.V.N.Road,
Erode.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree of the Motor Accident Claims Tribunal (II Additional District Court), Erode in M.C.O.P.No.456 of 2010 dated 28.06.2013.

For Appellant : Ms.H.Kavitha

For 3rd Respondent : Mr.C.Ramesh Babu



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For 5th Respondent : Mr.K.Padmanabhan

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants / claimants herein against the Judgment and decree passed in M.C.O.P.No.456 of 2010 dated 28.06.2013 on the file of the Motor Accident Claims Tribunal, Chennai (II Additional District Court), Erode for enhancement of compensation.

2. The claimant had filed this claim petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.10,00,000/- in M.C.O.P.No.456 of 2010 from the respondents.

3. In M.C.O.P.No.456 of 2010, the learned Tribunal, upon considering the evidence, has passed an award for an amount of Rs.2,85,000/- payable by the third respondent / New India Insurance Company Limited, Erode with 7.5% interest from the date of filing of the claim petition till the date of realization.



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4. It is the evidence of P.W.1 that on 16.05.2010 at about 11.40 am., one Shanmugam along with his daughter Umamaheswari, her minor children Madhanraj and minor Pradeep while they were proceeding in the TATA Indica Car bearing registration No.TN 07 AY 5946 from Erode to Gobichettipalayam near Kullapalayam Pirivu, a bus bearing registration No.TN 33 AD 9519 came at a high speed and driven by the driver in a rash and negligent manner, from the opposite direction and dashed against the car. Eventually, the car got heavily damaged and the said Shanmugam died on the way to the hospital and others sustained serious injuries and fractures, is not in dispute.

5. Since as the claim petition is filed based on a same accident the claim petition has been taken together by recording evidence, judgment in the M.C.O.P came to be passed by the learned Tribunal.

6. To substantiate the claims putforth in the claim petition four witnesses one of the injured Umamaheswari, Doctor Periyasamy, Doctor Ramamoorthy, V.V.Mathiyazhagan have been examined as



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P.W.1 to P.W.4. Exs.P1 to P39 have been marked. On the third respondent side K.Raju, driver of the 2nd respondent bus was examined as R.W.1. No document was marked by the respondent's side.

7. On behalf of the third respondent resisted the above said claims by way of filing counter as follows:

The petitioners were put to proof of the accident, age, occupation and income of the deceased are not admitted by the third respondent and the claim is excessive.

8. On behalf of the fifth respondent / National Insurance Company Limited, Chennai the claim petitions are resisted by filing counter as follows:

The accident took place only due to the negligent driving of the driver of the bus namely first respondent. The case was registered against the first respondent, driver of the bus. The fifth respondent / Insurance Company is not liable to pay any compensation and the



claim is excessive.

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9. The learned counsel appearing of the appellant / claimant would vehemently contend that the deceased was doing real estate business and the notional income fixed by the tribunal is very less. The tribunal has deducted 50% towards personal and living expenses is also incorrect. The amounts awarded for loss of consortium and funeral expenses are not sufficient and prayed for enhancement of the compensation.

10. The learned counsel for the third respondent / National Insurance Company would vehemently contend that by considering the oral and documentary evidence the tribunal has passed an award for Rs.10,00,000/- is a very reasonable and needs no interference at all.

11. The learned counsel for the fifth respondent / National Insurance Company would putforth that the tribunal has not fastened liability against the fifth respondent. The stand of the



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claimants that due to the rash and negligent driving of the driver of the bus only accident happened was accepted by the tribunal and consequently the owner of the bus and the Insurance Company of the bus namely third respondent were held jointly and severally liable to pay compensation. The First Information Report was also registered against the driver of the bus namely the first respondent herein. Therefore, the order of the tribunal be confirmed.

12. The deceased Shanmugam was stated to the realtor and earning a sum of Rs.20,000/- per month. To prove the said factum P.W.4 Mathiyazhagan was examined as P.W.4. It is the evidence of P.W.4 that the said deceased Shanmugam was doing real estate business before the accident and was earning a sum of Rs.20,000/- per month. Apart from the oral evidence of P.W.1 and P.W.4, no document was filed to prove the said fact. The date of accident is 16.05.2010. In *Syed Sadiq, etc. Vs. Divisional Manager, United India Insurance Co. Ltd., reported in 2014 (1) TN MAC 459 (SC)*, the Hon'ble Supreme Court has fixed the Notional income of 24 year old injured person, heritable vendor at Rs.6500/- per month for the



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accident occurred in the year 2008. Therefore, this Court deems fit to

fix the income of the deceased at Rs.7000/-. As regards age of the

deceased Shanmugam, his age is mentioned as 63 in Ex.P6 post

mortem certificate. Therefore, the age of the deceased is taken as 63

years on the date of accident. As per the law laid down by the

Hon'ble Supreme Court in *National Insurance Company Limited*

-vs- Pranay Sethi, reported in 2017(2) TANMAC 609 (SC), for the

persons who have crossed the age of 60 years no future prospects

need be added with the income. The Hon'ble Supreme Court has

standardized the details of multiplier to be adopted in case of the

deceased person in *Sarala Varma -vs- Delhi Transport Corporation*

and another, reported in 2009(2) TNMAC 1 (SC). For the age group

of person between 61 to 65 the multiplier to be adopted is 7. As per

the said judgment, if the dependent family members are 2 to 3 then

1/3rd is to be deducted for personal and living expenses. Therefore,

the monthly income for the purpose of computing the loss of

dependency is worked out as follows:

Age of the deceased : 63 years

1/3rd to be adopted 7 for



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personal and living expenses :

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Rs.7000 - 2333 = 4667, 4667 x 12 x 7 = Rs.3,92,028/-

Towards loss of consortium to the wife of the deceased namely first appellant an amount of Rs.15,000/- is granted (already an amount of Rs.25,000/- granted by the Tribunal). As per law laid down by the Hon'ble Supreme Court in *Pranay Sethi -vs- National Insurance Company 2017(2) TANMAC 609 (SC)*, an amount of Rs.40,000/- is granted for loss of parental consortium for second appellant herein. For loss of estate an amount of Rs.15,000/- is granted. In all other aspects the award passed by the tribunal need no interference. The compensation as awarded is reworked and tabulated as follows:

<i>Sl. No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed or enhanced or granted or reduced</i>
1	For Loss of Dependency	Rs.2,10,000/-	Rs.3,92,028/-	Enhanced
2	For Loss of Consortium to the 1st appellant	Rs. 25,000/-	Rs. 40,000/-	Enhanced
3	For Loss of Consortium to the 2nd	---	Rs.40,000/-	Granted



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<i>Sl. No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed or enhanced or granted or reduced</i>
	appellant			
3	For Loss of Love and affection	Rs. 40,000/-	Rs. 40,000/-	Confirmed
4	For Funeral Expenses	Rs. 10,000/-	Rs. 10,000/-	Confirmed
5	For Loss of Estate	---	Rs.15,000/-	Granted
	Total	Rs.2,85,000/-	Rs.5,37,028/-	Enhanced

13. Heard the rival submissions put forth by both sides' learned counsels. Perused the entire materials available on record.

14. Thus, the compensation awarded by the Tribunal is enhanced which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

15. In the result,

(i) The Civil Miscellaneous Appeal is **partly allowed**. No costs.



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(ii) The compensation awarded by the Tribunal is enhanced from **Rs.2,85,000/- to Rs.5,37,000/-**.

(iii) The 3rd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.5,37,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum **from the date of numbering of the petition** till the date of deposit to the credit of M.C.O.P.No.456 of 2010 on the file of the Motor Accident Claims Tribunal, Chennai (II Additional District Court, Erode), within a period of *eight weeks* from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same on filing of cheque petition. The claimant is directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

31.07.2023
(1/4)

Index : Yes/No



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Speaking / Non-speaking order
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To

1. The Motor Accident Claims Tribunal,
(II Additional District Court), Erode.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

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