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C.M.A.No.447 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.447 of 2022

1.Chellammal

2.Anitha

3.Srinivasan

...Appellants

Vs.

1.Salim

2.The Manager,

M/s.New India Assurance Company Limited,

Company Limited,

No.39-C, Bye Pass Road,

Dharmapuri, Dharmapuri District.

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.05.2020 in M.C.O.P.No.1711 of 2016 on the file of the Motor Accident Claims Tribunal / Additional District Court (FAC), Namakkal.

For Appellants : Mr.S.Sankar

for Mr.C.Thangaraju

For Respondents : Ms.S.R.Sumathy for R2

No appearance for R1



J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation awarded by the Tribunal, dated 12.05.2020 made in M.C.O.P.No.1711 of 2016 on the file of the Motor Accident Claims Tribunal / Additional District Court (FAC), Namakkal.

2. The appellants are the claimants in M.C.O.P.No.1711 of 2016 on the file of the Motor Accident Claims Tribunal/Additional District Court (FAC), Namakkal. They filed the claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of Kaliyannan in the accident that took place on 24.08.2016.

3. According to the appellants, on the date of accident i.e., on 24.08.2016 at about 12.45 p.m., while the deceased was riding his two wheeler bearing Registration No.TN-28-P-8130, a lorry bearing Registration No.TN-29-AS 9562 belonging to the 1st respondent drove the same in a rash and negligent manner without observing Traffic Rules and dashed against the two wheeler of the deceased. Due to the impact, the deceased suffered injuries and succumbed to death. The deceased who was aged about 54 years, was an agriculturist and he was a sole bread winner of his family.



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4. The first respondent, who is the driver of the lorry remained ex-parte before the Tribunal.

5. The second respondent filed a counter denying all the averments made in the claim petition and submitted that in any case the claim is excessive.

6. Before the Tribunal, the appellants examined as P.W.1 to P.W.4 and marked Exs.P1 to P23. On the side of the 2nd respondent/Insurance Company no oral and documentary evidence was adduced.

7. The Tribunal considering the pleadings, oral and documentary evidence held that the deceased died due to the rash and negligent act of the driver of the first respondent's vehicle and directed the second respondent being the insurer of the vehicle to pay a sum of Rs.8,44,444/- as compensation to the appellants.

8. The learned counsel for the appellants submitted that though the claimants had shown that the deceased was an agriculturist and the accident was of the year 2016, the Tribunal had fixed the notional income at Rs.8,000/- p.m. which is very meagre and prayed for enhancement of the notional income



fixed by the Tribunal. The learned counsel further submitted that no compensation was awarded by the Tribunal to the claimants 2 and 3 under the head “loss of consortium”. Hence, he prayed for enhancement of compensation.

9. Though notice was served on the first respondent, none has entered appearance.

10. Per contra, the learned counsel for the 2nd respondent/Insurance Company submitted that the claimants had not produced any proof to show that the deceased was working as an agriculturist or was earning an income of Rs.8,000/-. Hence, the notional income fixed by the Tribunal at Rs.8,000/- is just and proper.

11. This Court finds that the grievance of the appellants is that the notional income fixed by the Tribunal at Rs.8,000/- is very meagre and considering the fact that the accident was of the year 2016 and the deceased was aged about 54 years at the time of accident, the notional income could be fixed at Rs.10,000/- and is entitled to 10% for “future prospects” as per the judgments of the Hon'ble Apex Court. The multiplier applicable to the deceased is 11. 1/3rd of his income has to be deducted towards his personal expenses.



Hence, the compensation under the head “loss of income” is enhanced to Rs.14,52,000/- [Rs.10,000/- + 1,000/- (10% future prospects) = Rs.11,000/- x 12x11 = Rs.14,52,000 – Rs.4,84,000 (1/3 personal expenses) = Rs.9,68,000/-.

12. The claimants are also entitled to “Loss of Consortium” for 2nd and 3rd claimants, whereas the Tribunal awarded “Loss of Consortium” only in respect of the 1st claimant. Hence, the claimants are entitled to additional compensation of Rs.80,000/- [Rs.40,000/- x 2]. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of Income	7,74,444	9,68,000	Enhanced
2.	Loss of Estate	15,000	15,000	confirmed
3.	Funeral expenses	15,000	15,000	confirmed
4.	Loss of Consortium	40,000	1,20,000	Enhanced
	Total	8,44,444	11,18,000	Enhanced by Rs.2,73,556/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,44,444/- is hereby enhanced



to Rs.11,18,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The 1st appellant being the wife of the deceased is entitled to a sum of Rs.6,18,000/-, the 2nd and 3rd appellants being the daughter and son of the deceased are entitled to a sum of Rs.2,50,000/- each as compensation. The 2nd respondent/Insurance Company is directed to deposit the modified award amount 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. On such deposit, the appellants are permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. No costs.

13.07.2023

Index: Yes/No

Speaking order: Yes/ No

Neutral Citation : Yes/No

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To

- 1.The Motor Accident Claims Tribunal /
Additional District Court (FAC), Namakkal.
- 2.The Section Officer
VR Section, High Court of Madras
Chennai – 600 104.



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C.M.A.No.898 of 20



SUNDER MOHAN,J.

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