



CMA.No. 370 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 14.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No. 370 of 2022

1.Kalyani
2.Prema
3.Priya
4.Sakthi

... Appellants

Versus

1.M. Sivakumar
2.Jayachandru
3.The Manager
Reliance General Insurance Company Limited
Reliance House, 6th Floor, No.6
Haddows Road, Nungambakkam
Chennai-600 006.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No. 363 of 2019, dated 26.10.2021 on the file of the Motor Accident Claims Tribunal/Sub Court, Panruti.

For Appellants : Mrs.Ramya V. Rao
For RR 1&2 : Exparte before the Tribunal
For R3 : Mrs.G. Sukumari



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JUDGMENT

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The above appeal is filed by the claimants seeking enhancement of compensation.

2. On 18.06.2019, while the deceased was walking on the road from Panrutti to Kumbakonam, the driver of the lorry bearing Registration No. TN-25-E-6129 belonging to the first respondent and insured with the third respondent came behind him in a rash and negligent manner and dashed against the deceased. According to the claimants, the deceased was an agricultural coolie and earning a sum of Rs.25,000/- per month. The deceased was aged about 50 years at the time of accident and therefore, the wife and children of the deceased filed the claim petition claiming a sum of Rs.25,00,000/- as compensation.

3. Before the Claims Tribunal, the respondents 1&2 remained exparte and the claim petition was contested by the 3rd respondent/Insurance Company by filing counter affidavit denying all the averments made in the claim petition apart from disputing the negligence, liability and quantum of compensation.



4. Before the Claims Tribunal, the first claimant examined herself as PW1 and one other witness was examined as PW2. Ex.P1 to Ex.P7 were marked in support of the claim. On the side of the 3rd respondent/Insurance Company, no oral or documentary evidence was adduced.

5. The Claims Tribunal, on an assessment of the entire evidence on record rendered a finding of negligence against the driver of the first respondent, assessed the compensation at Rs.14,41,250/- along with 7.5% interest and mulcted the liability on the 3rd respondent/Insurance Company. Not satisfied with the award passed by the Claims Tribunal, the claimants have filed the above appeal for enhancement of compensation.

6. The learned counsel for the appellants submitted that the award of the Tribunal towards loss of dependency was erroneous. The learned counsel submitted that as the deceased was working as an agricultural coolie and earning a sum of Rs.25,000/- per month, the Tribunal erred in assessing the notional income at a meagre sum of Rs.9,000/-. The learned counsel further submitted that the Tribunal erred in not awarding any amount towards loss of consortium to the children of the deceased. The learned counsel



fairly submitted that the award of the Tribunal towards Transport Charges had to be deleted.

7. The learned counsel for the 3rd respondent/Insurance Company, on the other hand, submitted that the award of the Claims Tribunal was just, fair and reasonable and did not call for any interference in the appeal.

8. I have heard both the learned counsels and perused the materials available on record.

9. The tribunal in the absence of any evidence in proof of the income assessed the notional income at Rs.9,000/-. Considering the avocation of the deceased, this Court is of the view that evidence in support of the income in the form of documentary evidence cannot be expected. In any event, considering the cost escalation in the year 2019 and the number of dependents, I am of the view that the income could be reasonably fixed at Rs.14,000/-p.m. 1/4 of the income is deducted towards “personal expenses” of the deceased 25% is added towards future prospects, the multiplier 13 is adopted. Therefore, the award of the Tribunal towards loss of dependency is



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fixed at Rs.17,55,000/-. As far as the award of the Tribunal towards loss of consortium is concerned, I am of the view that the children of the deceased would be entitled to Rs.40,000/- each.

10. In view of the above discussion, the award of the Tribunal is modified as follows:-

<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1	Loss of dependency	Rs.13,16,250	Rs.20,47,500
2.	Loss of Consortium (wife)	Rs.40,000	---
	Loss of Consortium (children)	---	Rs.1,60,000
3.	Loss of Love and Affection	Rs.45,000	---
4.	Funeral Expenses	Rs.15,000	Rs.15,000
5.	Transportation	Rs.10,000	---
6.	Damaged to Clothes & Articles	Rs.15,000	Rs.15,000
7.	Loss of Estate	---	Rs.15,000
	Total	Rs.14,41,250	Rs.22,52,500

Loss of Dependency:
= Rs.14,000+Rs.3,500 = Rs.17,500 x 12 x 13 x 1/4
= Rs.20,47,500

11. The claimant is entitled to enhanced compensation amount of Rs.22,52,500/- along with 7.5% interest from the date of the claim petition till the date of deposit.

12. The learned counsel for the 3rd respondent/Insurance Company



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fairly submitted that the 3rd respondent has not deposited the award amount before the Tribunal. Therefore, there shall be a direction to the 3rd respondent/Insurance Company to deposit the entire compensation amount of Rs.22,52,500/- along with 7.5% interest within a period of 8 weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are entitled to withdraw the same by making appropriate application before the Tribunal.

13. Accordingly, the Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs.

14.06.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

MSM



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To

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- 1.The III Court of Small Causes,
Motor Accidents Claims Tribunal, Chennai.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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N.MALA.J.,

msm

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