



C.M.A.No.1174 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.07.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.1174 of 2018

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1. Amudhavalli
2. Vijayakumar
3. Gayathri

.. Appellants

Vs.

1. Saravanan

(first respondent remained ex-parte
before the Tribunal)

2. The United India Insurance Company Limited,
No.48, Arcot Road,
Saligramam,
Chennai-600 093.

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.11.2017 made in M.C.O.P.No.59 of 2017 on the file of the Motor Accidents Claims Tribunal (Special District Court), Tiruvallur.

For appellants : M/s.A.Subadra

For respondents: R-1 set ex-parte before the Tribunal

M/s.R.Vijaya Kamala for R-2



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JUDGMENT

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The appellants are the claimants, who have filed the Claim Petition in M.C.O.P.No.59 of 2017 before the Tribunal for award of compensation at Rs.20 lakhs, for the accident that had taken place on 28.04.2016. The Tribunal, after considering the entire oral and documentary evidence, awarded total compensation of Rs.8,41,440/- and directed the second respondent/Insurance Company to deposit the said Award amount with interest at 7.5% from the date of claim petition till the date of deposit. Aggrieved by the same, the claimants have filed the present appeal for enhancement of the compensation amount.

2. The present appeal is filed by the claimants on the ground that the Tribunal has fixed notional income of Rs.7,000/- only without any basis. Even under the Employee's Compensation Act, the minimum wages of the deceased has to be fixed at Rs.8,000/-. The claimants have pleaded and proved that the deceased/S.Dilli Babu was a vendor of tender coconut and also was distributing newspapers, and he was the earning member/bread-winner of the family. The claimants are also aggrieved that the Tribunal has not fixed future prospects and deducted only 1/3 towards personal expenses of the deceased and therefore, the Tribunal ought to have fixed the notional income which is proportionate to his avocation. Though the claimants have stated before the Tribunal that the deceased was earning Rs.20,000/- per month before the accident, the same was

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not considered by the Tribunal and without any reason, the Tribunal has arbitrarily fixed the notional income of Rs.7,000/- per month, and therefore, the impugned Award of the Tribunal does not reflect the "just" compensation, and therefore, the compensation awarded by the Tribunal has to be enhanced proportionate to the avocation of the deceased and the claimants prayed for allowing the present appeal by enhancing the compensation amount.

3. The first respondent remained ex-parte before the Tribunal.

4. Learned counsel appearing for the second respondent/Insurance Company submitted that though the claimants have stated that the deceased was earning Rs.20,000/- per month as a vendor of tender coconut/newspaper distributor, there is no evidence to prove that the victim/deceased was doing the said avocation and earning Rs.20,000- per month, and therefore, in the absence of any oral and documentary evidence, the Tribunal rightly fixed the notional income of Rs.7000/- in proportion to the avocation of the deceased. Further, the Tribunal applied multiplier method and awarded the compensation under various heads as per the guidelines of the Supreme Court in various decisions on the subject.

5. It is the further contention of the learned counsel for the second respondent/Insurance Company that the impugned Award of the Tribunal reflects the 'just' compensation and it does not warrant any interference by this Court



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and there are no valid grounds/reasons given by the appellants/claimants to enhance the compensation.

6. Heard both sides and perused the materials available on record.

7. The accident is admitted. The offending vehicle was involved in the accident, which is also admitted. The offending vehicle was insured with the second respondent/Insurance Company and the liability of the Insurance Company is also not in dispute.

8. The only dispute now raised before this Court is regarding the quantum of compensation awarded by the Tribunal.

9. On a perusal of the entire materials available on record, including the oral and documentary evidence, as the first appellate Court and this Court being the final fact finding Court, has to re-appreciate the entire evidence and give independent finding and also to see as to whether the Tribunal has rightly appreciated the evidence and awarded 'just' compensation or not, or it requires to be enhanced.

10. A perusal of the records shows that though in the claim petition, the claimants have stated that the deceased was earning Rs.20,000/- per month and he was doing tender coconut vending business/newspaper distributor, there is no independent evidence to show the same, except the oral evidence of the claimants and there is no other independent evidence let in to prove that the



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deceased was doing tender coconut business/newspaper distributor, and earning Rs.20,000/- per month. However, by taking generous and sympathetic view, the Tribunal has rightly fixed Rs.7,000/- per month as the notional income of the deceased, even in the absence of any specific evidence. Since the deceased was aged about 55 years at the time of accident, considering the age, the Tribunal applied proper multiplier and awarded the compensation under the various heads as tabulated below:

<i>Sl.No.</i>	<i>Heads under which the amounts are awarded by the Tribunal</i>	<i>Amounts awarded by the Tribunal</i>
1	Pecuniar loss	6,16,440
2	Loss of consortium to the wife	1,00,000
3	Funeral expenses	25,000
4	Loss of love and affection to the children of the deceased	1,00,000
	Total	8,41,440

11. Considering the members in the family who are dependent on the deceased, the Tribunal deducted 1/3 towards the personal expenses of the deceased and awarded the compensation under the head "pecuniary loss", which is proportionate to the materials on record, and this Court being the first appellate Court and the final Court of fact finding and while considering the entire materials available on record independently, this Court does not find any additional materials to enhance the compensation awarded by the Tribunal.



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Since the avocation of the deceased was not proved and the income of the deceased was also not proved, there is no reason to differ from the view taken by the Tribunal. The reasons given by the Tribunal for fixing the notional income of Rs.7,000/- per month of the deceased, while considering the materials and the age of the deceased and the number of dependents in the family, this Court finds that the impugned Award was passed by the Tribunal by granting compensation is just and fair, this Court does not find any perversity in appreciation of the evidence. Therefore, there is no reason and the ground to enhance the compensation. Unless this Court finds any perversity in appreciation of the evidence by the Tribunal or the compensation awarded is not 'just', this Court as the appellate Court will not interfere with the impugned Award passed by the Tribunal.

12. There is no merit in the present appeal, which is accordingly dismissed, confirming the impugned Award passed by the Tribunal. There shall be no order as to costs in the present appeal.

13. The second respondent/Insurance Company is directed to deposit the compensation as awarded by the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any already deposited by them before the Tribunal. On such deposit, the Tribunal is directed to credit the compensation to the Bank Account of the claimants, by



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following the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016 (reported in 2016 (2) LW 561 - The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). The claimants are permitted to withdraw the amount of compensation in the ratio mentioned by the Tribunal.

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Index: Yes/no

Neutral Citation : Yes/no

Speaking Order: Yes/no

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To

1. The Special District Judge (Motor Accidents Claims Tribunal), Thiruvallur.
2. The Section Officer, V.R.Section, High Court, Madras.

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