



C.M.A.No.948 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.948 of 2020
and CMP.No.5920 of 2020

The Oriental Insurance Co. Limited,
No.4, Esplanade, Broadway,
Chennai – 108.

...Appellant
vs.

1.Ashokan

2.Vennila

3.Gowthaman

4.Manimegalan

5.Sivakamy

6.The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai – 3.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order of the Motor Accidents Claims Tribunal cum Special Sub Court II & Court of Small Causes, Chennai made in M.C.O.P.No.9001/2015 dated 09.08.2019 and allow the appeal with costs.



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For Appellant : Mr.E.Chandrasekaran

For R1 to R5 : Mr.K.Sasidran

For R6 : Mr.K.Aswini Devi

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J U D G M E N T

This appeal has been filed to set aside the order of the Motor Accidents Claims Tribunal cum Special Sub Court II & Court of Small Causes, Chennai made in M.C.O.P.No.9001/2015 dated 09.08.2019 and allow the appeal with costs. The said appeal has been filed by the insurance company challenging the quantum of compensation awarded by the Tribunal.

2.The facts leading to the appeal are as follows:

The deceased was walking along the roadside near Pullah Avenue Junction, EVR Road, Aminjikarai, Chennai. At that time a lorry belonging to the first respondent Corporation driven by it's driver in a rash and negligent manner dashed against the deceased resulting in her death.



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3.The claimants, the children of the deceased filed the claim petition claiming a sum of Rs.10,00,000/-, as compensation. The claimants stated that the deceased was aged about 69 years at the time of the accident and was self-employed. According to the claimants, the deceased was earning a sum of Rs.10,000/- per month. The first respondent Corporation remained ex-parte and the second respondent contested the claim petition.

4.The second respondent in it's counter denied all the contentions raised in the claim petition. The second respondent disputed the negligence, liability and the quantum of compensation claimed by the claimants.

5.Before the Motor Accident Claims Tribunal the claimants examined two witnesses and marked Ex.A1 to A18. The second respondent neither examined any witnesses nor filed any documents.

6.The Claims Tribunal on an assessment of entire evidence on record awarded a sum of Rs.7,95,000/- along with interest at the rate of 7.5% as



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compensation to the claimants.

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7.The insurance company has filed the above appeal questioning the quantum of compensation awarded by the Claims Tribunal.

8.The learned counsel for the appellant submitted that in the absence of any evidence the Tribunal erred in assessing the income of the deceased at Rs.7,000/- per month, moreso, when admittedly she was aged about 69 years at the time of the accident. He further submitted that the Tribunal erred in awarding double compensation under the heads of loss of love and affection and parental consortium. The learned counsel therefore submitted that the compensation awarded by the Tribunal was exorbitant and the same needed to be modified.

9.The learned counsel for the respondents/claimants on the other hand submitted that on the basis of the evidence on record the Tribunal had rightly assessed the income of the deceased and awarded just and fair compensation. The learned counsel for the respondents/claimants therefore



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submitted that the appeal was meritless and the same deserved to be dismissed.

10.I have heard both the learned counsel and have perused the records.

11.It is undisputed that the deceased was aged about 69 years at the time of the accident. Though the respondents/claimants claim that the deceased was self-employee and was earning Rs.10,000/- per month, absolutely no iota of evidence is filed in support of the same. In my view, the Tribunal erred in assessing the income of the deceased at Rs.7,000/- per month, moreso, when there was absolutely no evidence in support of the income of the deceased. Considering the age of the deceased and also in view of the fact that all the claimants are between 54 and 39 years of age, in my view the income assessed by the Tribunal is excessive. Under the facts and circumstances of the case and considering that the accident took place in 2015, the income of the deceased can be assessed at Rs.4,500/- per month. Hence the income of the deceased is fixed at Rs.4,500/- p.m.



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Towards the personal expenses of the deceased $\frac{1}{4}$ th has to be deducted and therefore the compensation towards loss of income would be Rs.2,02,500/- ($4500 \times \frac{1}{4} = 1125$; $4500 - 1125 = 3375 \times 12 \times 5 = 2,02,500$). I am in agreement with the learned counsel for the appellant that the Tribunal ought not to have awarded double compensation towards loss of love and affection and parental consortium. I find that the claimants are entitled to Rs.40,000/- each towards loss of parental consortium. The compensation towards funeral expenses and loss of estate assessed at Rs.15,000/- respectively is in order.

12.In view of the said discussion, I am of the view that the award of the Tribunal needs to be modified and the same is modified as follows:

Particulars	Tribunal	Court
Loss of dependency	Rs.3,15,000/-	Rs.2,02,500/-
Loss of Estate	Rs.15,000/-	Rs. 15,000/-
Funeral Expenses	Rs.15,000/-	Rs. 15,000/-
Loss of Love and affection and Parental consortium	Rs.2,50,000/- Rs.2,00,000/-	Rs.2,00,000/-
Total	Rs.7,95,200/-	Rs.4,32,500/-



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13.The claimants shall be entitled for a sum of Rs.4,32,500/- along with interest at the rate of 7.5%, the same shall be calculated from the date of filing of this appeal. It is submitted by the learned counsel appearing for the insurance company that 50% of the award amount has already been deposited in pursuance to the interim order passed by this Court. Hence, the Insurance company is directed to deposit the balance amount within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants shall be entitled to withdraw the said amount as per the apportionment made by the Tribunal by making proper application before the Tribunal.

14.In the result, the Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index : yes/no
Internet : yes/no
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To



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Chennai.

2.The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai – 3.

3.The Section Officer,
V.R.Section,
High Court,
Madras.

N.MALA, J.

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