



C.M.A.No.773 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.773 of 2021

1.M.Selvi
2.M.Kumar
3.M.Kandavel
4.M.Vani

... Appellants/Petitioners

vs.

1.D.Selvam
(R1 set exparte before the lower Court)

2.HDFC ERGO General Insurance Company Ltd.,
2nd Floor, R.R.Tower II, No.94/95, TVK Industrial Estate,
Guindy, Chennai-600 032. ...
Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 15th day of December 2020 made in M.C.O.P.No.1856 of 2019 on the file of the Motor Accident Claims Tribunal / Chief Judge, Court of Small Causes) at Chennai.

For Appellants	: Mr.G.Thulasiraman	For 1 st
Respondent : Given up		For 2 nd Respondent :
Mrs.R.Sreevidhya		

JUDGMENT

The wife and children of the deceased Mannar have preferred this Civil Miscellaneous Appeal against the judgment and decree dated



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15.12.2020 passed in M.C.O.P.No.1856 of 2019 on the file of the Motor Accident Claims Tribunal / Chief Judge, Court of Small Causes, at Chennai, for enhancement of compensation.

2. The claim petition was filed by the appellants herein under Section 166 of Motor Vehicles Act, 1988, and under Rule 3 of MACT Rules, claiming compensation of Rs.12,00,000/- for the death of S.Mannar in a motor accident that occurred on 31.12.2018.

3. The Tribunal after hearing both sides argument and upon consideration of oral and documentary evidence has concluded that the owner of the vehicle namely the 1st respondent and 2nd respondent / insurer are jointly and severally liable to pay compensation of Rs.3,95,000/- with interest at 7.5% per annum from the date of filing of the petition till the date of realisation. Against the said award, this appeal.

4. The learned counsel appearing for the appellants/claimants would vehemently argue that the deceased was aged about 65 years. To prove the same, Ex.P7 voter's identity card was filed. Based on the Post-mortem Certificate Ex.P3, age of the deceased was fixed by the Tribunal as 75 years which is not correct. It is his further argument that wife of the



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deceased Mannar along with her sons and daughter have filed the claim petition. But, the Tribunal deducted 50% for personal and living expenses also is not correct. The amount awarded for loss of love and affection is not sufficient and prayed for enhancement.

5. Per contra, the learned counsel appearing for the Insurance Company would strenuously contend that considering the oral and documentary evidence, the Tribunal has awarded compensation of Rs.3,95,000/- is a well reasoned order and prayed for dismissal of the appeal.

6. At trial, on the side of the appellants, the 3rd claimant Mr.M.Kandavel was examined as PW1 and one Raman – eye witness was examined as PW2. Exs.P1 to P16 were marked. Copies of Post-mortem Certificate and Voter Identity Card of the deceased were marked as Ex.P3 and Ex.P7. On the side of the respondents, neither any oral evidence was let in nor any document was marked.

7. It is the evidence of eye-witness-PW2, Mr.K.Raman that on 31.12.2018, at about 6 a.m., when he was crossing the Arakkonam-Nemili road near, Paruthipudhur Pillayar Koil while the deceased was walking



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along the said road, towards western side, a splendor motor cycle bearing Reg.No.TN-73-R-9924 came in a rash and negligent manner in north-south direction and dashed against the deceased. Due to the said impact, the deceased was thrown away and sustained serious injuries and died on 03.01.2019 at Government General Hospital, Chennai, is not in dispute.

8. According to the claimants, the deceased was an agricultural coolie besides working as a Commission Agent and earning Rs.500/- per day and all the claimants were depending upon the income of the deceased. To fix the age of the deceased, copy of the Post-mortem Certificate-Ex.P3 and copy of the Voter Identity Card Ex-P7 are available. In Ex.P3-Post mortem Certificate, age of the deceased is mentioned as 75 years. As per Ex.P7 Voter Identity card, at the relevant point of time, his age was 65 years. This Court deems fit to fix the age of the deceased as 70 years. He was working as an agricultural coolie and earning Rs.500/- per day. Relying upon the above said details, income of the deceased is fixed at Rs.7,500/- per month.

9. As per the law laid down by the Hon'ble Supreme Court in ***Smt.Sarla Verma & Ors., v. Delhi Transport Corporation & Another*** reported in ***2009 (2) TN MAC 1 (SC)***, the relevant multiplier to be adopted



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is "5" and in respect of deduction for personal and living expenses, 1/4th has to be deducted. Based on the aforesaid observations, in order to calculate the loss of dependency, the following formula emerges:

Age of the deceased : 70 years
Notional income fixed : Rs.7,500/- p.m.
Deduction to be made : 1/4th
Rs.7,500/- - Rs.1,875/-
Rs.5,625/-
Multiplier to be adopted : 5 m
Rs.5,625/- X 12 X 5
: Rs.3,37,500/-.

10. The Tribunal has awarded Rs.60,000/- towards loss of love and affection for all the claimants and Rs.20,000/- is granted for loss of consortium. Therefore, As per the law laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd., v. Pranay Sethi and others**, reported in **2017 (2) TN MAC 609(SC)**, Rs. 1,40,000/- is granted for loss of spouse and parental consortium, in addition to the amount already granted. Towards loss of estate Rs.15,000/- is granted. In all other aspects, the amount awarded by the Tribunal appears to be reasonable, therefore, needs no interference. The Compensation awarded by the Tribunal is reworked and tabulated below:



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Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For loss of dependency	Rs.3,00,000/-	Rs.3,37,500/-	Enhanced
2	For Funeral Expenses	Rs. 15,000/-	Rs.15,000/-	Confirmed
3	For Loss of Love and Affection	Rs. 60,000/-	Rs.60,000/-	Confirmed
4	For Loss of spouse and parental Consortium	Rs. 20,000/-	Rs.1,60,000/-	Enhanced
5	For Loss of Estate		Rs. 15,000/-	Granted
	Total	Rs.3,95,000/-	Rs.5,87,500/-	
			Rs.5,88,000/-	

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.3,95,000/- to **Rs.5,88,000/-** which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation excluding the default period if any.

12. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.3,95,000/- to **Rs.5,88,000/-**.



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(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.5,88,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation excluding the default period if any, to the credit of M.C.O.P.No.1856 of 2019 on the file of the Motor Accident Claims Tribunal / Chief Judge, Court of Small Causes) at Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, as per the apportionment made by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing cheque petition before the Tribunal. The claimants are directed to pay the 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 claimants.

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Index : Yes/No
Speaking / Non-speaking order
ssn

To:

7/9



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1. The Motor Accident Claims Tribunal,
Chief Judge, (Court of Small Causes) at Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

ssn

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