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C.M.A.No.1652



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.06.2023

Coram:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No. 1652 of 2018

1. Mary Santhi

2. Roshlin Ananthi

...Appellants

Vs.

1. Ravichandran

2. Raveendran

3. National Insurance Company Limited,

Having Office at No.1272-1273,

Palaniappa Complex,

Mettur Road, Erode - 11.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 14.06.2012 made in M.C.O.P.No.334 of 2011 on the file of the Motor Accident Claims Tribunal, the Principal District Court, Erode.

For Appellants : Mr.S.Kaithamalai Kumaran
for Mr.P.Parthikannan

For R1 : Left

For R2 : No appearance

For R3 : Mrs.N.B.Sureka



JUDGMENT

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The wife and the daughter of the deceased Jones have filed M.C.O.P.No.334 of 2011 before the Motor Accidents Claims Tribunal, Principal District Judge, Erode, claiming a sum of Rs.35,00,000/- as compensation for the death of one Jones who died in the accident that took place on 05.04.2011.

2. According to the claimants, on the date of accident, when the deceased Jones was riding in a TVS 50 moped bearing Registration No. TN 33 E 2060 from north to south on Erode to Karur main road, near P & C pipe company, the driver of the bus bearing Registration No.TN 34 L 2776 owned by the second respondent and insured with the third respondent insurance company, drove the same in a rash and negligent manner and hit the TVS 50 moped from behind. Due to the said impact, the said Jones sustained fatal injuries and died on the way to hospital. The accident occurred only due to rash and negligent driving by the driver of the bus owned by the second respondent. At the time of accident, Jones was aged about 48, doing Watchman at Regional Transport Office, Erode and earning Rs.14,836/- per month, as salary.



3. The Tribunal, based on the materials available on record and the evidence, has observed that the accident had occurred due to the negligent driving of the driver of the bus and hence fixed the liability on the Insurance Company and awarded a total compensation of Rs.11,39,500/- with interest at 7.5% per annum from the date of petition. Feeling aggrieved and being dissatisfied with the quantum so awarded, the appellants/claimants have preferred this appeal seeking enhancement of the same.

4. The respondents 1 & 2, the driver and the owner of the offending vehicle remained ex-parte and the claim petition was contested by the third respondent/Insurance Company. The third respondent/Insurance Company filed a counter denying all the averments raised in the claim petition including the age, income and dependency of the claimants on the deceased.

5. Before the claims Tribunal, the first claimant examined herself as P.W.1., the eye-witness was examined as P.W.2. and one Meiyalaghan was examined as P.W.3 and marked Ex.P.1 to P.9 were filed on behalf of the claimants. The respondents neither examined any witness nor marked any documents.



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6. The learned counsel for the appellants has submitted that the Tribunal has erred in awarding a meagre sum of Rs.11,39,500/- as against the claim of Rs.35,00,000/- made by the appellants / claimants. At the time of the accident, the salary of the deceased at Rs.14,836/- erred in fixing the income at Rs.16,000/- per month without assigning reasons for granting a meager sum of Rs.1,164/- towards future prospects. Further he submitted that the Tribunal ought to have taken the future prospects of the deceased as per the ruling of the Apex Court. The learned judge erred in deducting Rs.2,00,000/- paid by the employer to the family of the deceased without considering the fact that solatium paid by the employer does not be deducted towards the just compensation arrived by the Tribunal. It is also submitted that the amounts awarded towards other heads are meagre and hence, the compensation awarded by the Tribunal needs interference at the hands of this Court by way of enhancement.

7. Per contra, the learned counsel for the third respondent/insurance company submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.



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8. Heard the learned counsel appearing for the appellants and learned counsel appearing for the third respondent and perused the materials available on record carefully and meticulously.

9. This is the claimants' appeal seeking enhancement of the compensation awarded by the Tribunal. Hence, there is no requirement for this Court to go into the findings of the Tribunal on negligence and liability of the insurance company to pay compensation to the claimants.

10. With respect to quantum of compensation, it is seen that the wife of the deceased was examined as P.W.1, who deposed in her evidence that the deceased was aged about 48 years and was earning Rs.14,836/- per month as a Watchman. On perusal of Ex.P9 is a salary certificate some deductions were made from the contribution of the deceased and there is no evidence whatever available to show that any future prospects of promotions in his cadre and also in the absence of any evidence in respect of increment, the Tribunal fixed a sum of Rs.16,000/- per month as the notional income of the deceased, deducted 1/3 towards personal expenses of the deceased, adopted 10 multiplier and awarded



a sum of Rs.12,80,000/- towards loss of Income which is on the lower side. The accident occurred in the year 2011. Considering the avocation of the deceased, the notional income was fixed by the Tribunal is correct. The Tribunal has wrongly taken the multiplier as '10'. In the light of the reported decision in the case of ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***2009 ACJ 1298 SC***, for the age group between 46 to 50 years old, the multiplier to be adopted is '13'. The deceased was aged 48 years at the time of accident and hence, adopted the multiplier of '13'. Thus, if a sum of Rs.16,000/- is fixed as notional income per month, 1/3 is deducted from the resultant amount and by adopting '13' multiplier, the loss of Income works out to Rs.16,64,000/- (Rs.16,000 x 12 x 13 x 1/3). Accordingly, the compensation awarded by the Tribunal towards loss of Income stands modified to Rs.16,64,000/-.

11. However, the Tribunal has awarded only Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate, which appears to be on the lower side and hence, the same is hereby enhanced to Rs.15,000/- and 15,000/- respectively. The award of Rs.50,000/- towards loss of consortium, in the opinion of this Court, is excessive, and hence, the same is reduced to Rs.40,000/-. The Tribunal has not awarded any amount of compensation under the heads 'Loss of love and affection;



this Court awarded a sum of Rs.40,000/- towards 'Loss of love and affection' to the daughter of the deceased/second appellant. There is no modification with regard to the award of Rs.5,000/- towards Transport expenses.

12. The details of the modified compensation are as follows:

<i>S.No</i>	<i>Various Heads</i>	<i>Awarded by the Tribunal</i>	<i>Awarded by this Court</i>
1.	Loss of Income	Rs.12,80,000	Rs.16,64,000
2.	Loss of Estate	Rs.2,500	Rs.15,000
3.	Funeral expenses	Rs.2,000	Rs.15,000
4.	Loss of consortium	Rs.50,000	Rs.40,000
5.	Transport charges	Rs.5,000	Rs.5,000
6.	Loss of love and affection of the second appellant	----	Rs.40,000
7.	Less: Amount already paid by the Transport Corporation to the Claimants on account of the death of the deceased	Rs.2,00,000/- (-)	----
	Total	Rs.11,39,500	Rs.17,79,000

13. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,39,500 is hereby enhanced to Rs.17,79,000/- with interest at the rate of 7.5% per annum from the date of petition. No costs. The second respondent/ Insurance Company is directed to deposit the modified amount of compensation, as ordered above, along with interest and costs, after deducting the amount if any, already deposited, within a



period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective shares as per the ratio of apportionment made by the Tribunal on making proper application.

It is made clear that the claimants are not entitled for interest for the compensation amount, in respect of the period of delay in filing this appeal. It is also made clear that the appellants/claimants have to pay the appropriate Court fee, before receiving the awarded amount.

16.06.2023

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Speaking Order: Yes/No
Index: Yes/No
Neutral Citation: Yes/No

To

1. The Principal District Court,
(Motor Accident Claims Tribunal)
Erode.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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A.A.NAKKIRAN, J.

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