



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.1368 of 2022

1.Ranganayagi

2.Shobana

3.Suba

4.Ajithkumar @ Perumal

... Appellants

Vs.

1.B.Katharshek

2.The Manager

Royal Sundaram Alliance Insurance Company Limited

Residing at No.1, Club House Road

Anna salai, Chennai-2.

... Respondents

(The 1st respondent remained absent and set ex-parte before the Tribunal and hence, notice to the 1st respondent is dispensed with)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 06.07.2019 made in M.C.O.P.No.1059 of 2016 on the file of the Motor Accidents Claims Tribunal, Additional District Court (FTC) at Kanchipuram.



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For Appellants : Mr.M.Lokesh

For R2 : Mrs.C.Harini

JUDGMENT

The appeal is filed by the appellants/claimants for enhancement of compensation granted by the Tribunal in the award dated 06.07.2019 made in M.C.O.P.No.1059 of 2016 on the file of the Motor Accidents Claims Tribunal, Additional District Court (FTC) at Kanchipuram.

2. The brief facts leading to the appeal are that, on 15.09.2016 at about 5.15 a.m., while the deceased Ravi was riding his motor cycle bearing Registration No.TN-19-P-6710 along with a pillion rider towards Walajabad on Tambaram to Walajabad State Highway, near Uthukottai Koot Road, the driver of the lorry bearing Registration No.TN-19-R-2493 belonging to the 1st respondent drove the same in a rash and negligent manner, hit the motor cycle from behind, due to which, the deceased Ravi sustained fatal injuries and died on the spot. According to the appellants/claimants, the accident occurred due to rash and negligent driving by the driver of the lorry. The deceased Ravi was aged 45 years at the time of accident and as a self-employed, he was earning income at Rs.25,000/- per month. Therefore, the widow and children of the deceased filed the Claim Petition seeking a sum of Rs.40,00,000/- as compensation.



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3. The 1st respondent, owner of the lorry remained exparte before the Tribunal and the Claim Petition was contested by the 2nd respondent. The 2nd respondent/Insurance Company filed a detailed counter denying all the averments made in the Claim Petition apart from denying the negligence, liability and quantum of compensation.

4. Before the Claims Tribunal, in support of their claim, the 1st appellant/1st claimant, wife of the deceased, examined herself as P.W.1, the eye-witness was examined as P.W.2 and one Kubendran was examined as P.W.3 and seven documents were marked as Exs.P1 to P7. The 2nd respondent/Insurance Company did not let in any oral and documentary evidence.

5. The Claims Tribunal, on an assessment of entire evidence on record, rendered a finding of negligence against the driver of the lorry belonging to the 1st respondent, assessed the compensation at Rs.11,72,416/- along with 7.5% interest and mulcted the entire liability on the 2nd respondent Insurance Company. Not satisfied with the award passed by the Claims Tribunal, the appellants/claimants have filed the above appeal for enhancement of compensation.

6. Learned counsel for the appellants/claimants submitted that the deceased

Ravi was aged 45 years at the time of accident and was earning a sum of Rs.25,000/-

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per month by doing timber business. Learned counsel further submitted that the assessment of notional income by the Tribunal at Rs.7,000/- per month was very much on the lower side and therefore, the award deserved to be interfered with in the appeal.

7. Learned counsel for the 2nd respondent/Insurance Company on the other hand submitted that the award of the Tribunal was fair, just and reasonable and did not call for any interference in the appeal.

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

9. It is seen from the records that the accident occurred in the year 2016, the deceased was aged 45 years at the time of accident and was maintaining a family of four members. According to the appellants, the deceased was doing timber business and was earning a sum of Rs.25,000/- per month. In the absence of any material with regard to income of the deceased, the Tribunal fixed the notional income of the deceased at Rs.7,000/- per month. Considering the cost escalation for the year 2016 and also the avocation of the deceased Ravi, I am of the view that the notional income can be fixed at Rs.12,000/- per month. The Tribunal added 25% towards future prospects, applied multiplier '14' and deducted 1/4th towards personal expenses of the



deceased. Thus, by fixing the monthly income of the deceased at Rs.12,000/-, the compensation awarded by the Tribunal towards loss of dependency is modified to

Rs.18,90,000/- (Rs.12,000/- + 3000 [Rs.12,000/- X 25%] X 12 X 14 X 3/4).

Therefore, the appellants/claimants are entitled to Rs.18,90,000/- towards loss of dependency. The Claims Tribunal has not awarded any sum towards loss of love & affection to the appellants 2 to 4, who are children of the deceased. I therefore, find that the appellants 2 to 4 shall be entitled to Rs.40,000/- each towards loss of love & affection. The award of the Tribunal under the heads “loss of consortium, funeral expenses and loss of estate” are just and reasonable and hence, the same are hereby confirmed.

10. In view of the above discussions, 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.11,02,416/-	Rs.18,90,000/-
2.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
3.	Loss of consortium to the 1 st appellant	Rs.40,000/-	Rs.40,000/-
4.	Loss of estate	Rs.15,000/-	Rs.15,000/-
5.	Loss of love & affection to the appellants 2 to 4	-	Rs.1,20,000/- (Rs.40,000/- X 3)
Total Compensation		Rs.11,72,416/-	Rs.20,80,000/- enhanced amount Rs.9,07,584/- rounded off to Rs.9,08,000/-

The compensation awarded by the Tribunal at Rs.11,72,416/- is therefore enhanced to



Rs.20,80,000/- along with interest at 7.5% per annum.

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11. It is submitted by the learned counsel for the 2nd respondent/Insurance Company that appeal was filed with the delay of 791 days and delay was condoned on condition that the appellants shall forfeit the interest for the delay period of 791 days as per the order of this Court dated 13.06.2022 made in C.M.P.No.5893 of 2022 in C.M.A.SR.No.32126 of 2022. In view of the above submission, it is made clear that the appellants/claimants are not entitled for any interest for the delay period of 791 days on the amount of Rs.9,08,000/- enhanced by this Court.

12. Learned counsel for the 2nd respondent/Insurance Company submitted that the entire amount awarded by the Tribunal along with accrued interest and costs has already been deposited before the Tribunal. In view of the said submission, there shall be a direction to the 2nd respondent/Insurance Company to deposit the enhanced amount of Rs.9,08,000/- along with 7.5% interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants/claimants shall be entitled to withdraw their respective share of the enhanced amount and as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by making appropriate application before the Tribunal.



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13. The appeal is accordingly partly allowed. There shall be no order as to costs.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

1.The Additional District Judge
Motor Accidents Claims Tribunal
Fast Track Court, Kanchipuram.

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



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N.MALA.J.,

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