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C.M.A. No.1516 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1516 of 2018

1. Pappathi
2. Minor Nethra Devi
3. Minor Rohith
(Minors 2 and 3 represented by next friend
mother Pappathi)

4. Marayee

5. Sellappan

... Appellants

Vs.

1. Palaniyandi
2. M/s. New India Assurance Co., Ltd.
Web Portal Divisional Office
New India Bhavan 2nd Floor
34/38, Bank Street,
Mumbai - 400 023
Maharastra State

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount awarded in the Judgment and Decree dated 10.04.2018 made in M.C.O.P. No.863 of 2015 on the file of the Motor Vehicle Accident Claims Tribunal/Principal District Court, Namakkal.



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C.M.A. No.1516 of 2023



For Appellants : Mr.N.Manokaran

For Respondents : Mr.S.Dhakshanamoorthy for R2
R1- Notice dispensed with by order
dated 12.06.2023

JUDGMENT

The above Civil Miscellaneous Appeal is filed for enhancement the compensation amount awarded in the Judgment and Decree dated 10.04.2018 made in M.C.O.P. No.863 of 2015 on the file of the Motor Vehicle Accident Claims Tribunal/Principal District Court, Namakkal.

2. The appellants are claimants. The 1st respondent is the owner and the 2nd respondent is the insurer of the offending vehicle namely Hyundai Car.

3. The case of the claimants is that on 08.06.2015 at about 17.00 hrs., while the deceased Ganesan was travelling in his motor cycle bearing Regn. No.TN-28-AU-1702, on Karur to Namakkal NH-7 Velur Bypass Road, near Mohanur Road over bridge, Western Service Road near Ramasamy Kadu, within the jurisdiction of Velur Police Station from South to North direction



with due care, one Sharmila, who drove the Hyundai i20 Car bearing Regn. No.TN-88-Z-9391 in the same direction, in a rash and negligent manner and in high speed, entered into the service road which is about 5 feet down and dashed against the deceased Ganesan, due to which, the car turned turtle and rotated in zig zag manner for about 100 feet. The deceased Ganesan sustained fatal injuries in his head and all over the body.

4. The wife, children and parents of the deceased Ganesan, filed a claim petition in MCOP No.863 of 2015 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Namakkal, claiming compensation of Rs.25,00,000/- for the death of the said Ganesan against the owner and insurer of the offending car since the accident had occurred due to the rash and negligence act of the driver of the said Car.

5. In order to substantiate the claim before the Tribunal, on the side of the claimants, 3 witnesses were examined as P.W.1 to P.W.3 and 23 documents were marked as Ex.P.1 to Ex.P.23. On the side of the respondents, no oral or documentary evidence was let in.



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6. The 1st respondent herein remained ex-parte before the Tribunal.

7. The Tribunal, after hearing the arguments of both sides and considering the materials, awarded compensation of Rs.12,04,000/- with cost and interest at 7.5% per annum from the date of petition till the date of realization and directed the 2nd respondent herein/Insurance Company to pay the said compensation to the claimants, on behalf of the 1st respondent herein/owner of the offending vehicle.

8. Challenging the above Award passed by the Tribunal, the claimants have filed the present appeal for enhancement of compensation.

9. The learned counsel for the appellants/claimants would submit that the deceased was an agriculturist and also a land Broker and he was earning not less than Rs.20,000/- per month, whereas, the Tribunal has fixed only Rs.6,000/- as monthly income of the deceased and failed to consider the materials produced before it. The learned counsel further submitted that the children of the deceased/2nd and 3rd appellants herein were studying in a reputed Institution and their annual school fee is around Rs.1 lakh per



children. A person with low income could not provide such a good education in a reputed Institution. The Tribunal has failed to consider all these facts and therefore, income fixed by the Tribunal is on the extreme lower side. Further, the learned counsel by relying on the Judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Ltd. Vs. Pranay Sethi* **and** submitted that as per the guidelines given by the Hon'ble Supreme Court, each of the dependents are entitled to the minimum sum of Rs.40,000/- towards loss of love and affection, whereas, the Tribunal has awarded only Rs.40,000/- to all the dependents under the head of loss of consortium. Therefore, the Award passed by the Tribunal does not reflect the just compensation and hence, the same may be enhanced.

10. The learned counsel for the 2nd respondent/Insurance Company would submit that the claimants did not produce any oral or documentary evidence to substantiate the claim of monthly income of Rs.20,000/- and they have also not produced any materials to prove the same. Therefore, the Tribunal fixed a sum of Rs.6,000/- notionally. Therefore, there is no merit in the appeal and the compensation fixed by the Tribunal is a "just compensation". Hence, there is no merit in the appeal and the same is liable to be dismissed.



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11. Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent.

12. Admittedly, the claimants are the dependents of the deceased Ganesan. The accident is not in dispute. The manner of accident is also not in dispute. The liability is also not in dispute. The claimants have filed the present appeal for enhancement of quantum of compensation awarded by the Tribunal.

13. As far as the income fixed by the Tribunal is concerned, though the appellants/claimants, claimed that the deceased was earning not less than Rs.20,000/- per month, there was no direct material to show that the deceased was getting monthly income of Rs.20,000/-. Therefore, the Tribunal notionally fixed Rs.6,000/- towards monthly income of the deceased. Though the learned counsel for the appellants/claimants by pointing out the school fee receipts of the children of the deceased submitted that the children of the deceased were studying in a reputed Institution and besides agriculture, the deceased was also doing land brokerage business and earning not less than



Rs.20,000/- per month, they claimants have not produced any income particulars or income tax returns of the deceased to prove the income of the deceased. In the absence of any documentary evidence, the Tribunal fixed the notional income of the deceased as Rs.6,000/-. This Court does not find any material to take different view from that of the Tribunal.

14. Though the learned counsel for the appellants/claimants relied on the decisions of the Hon'ble Supreme Court, the said decision was taken only after the date of the accident and therefore, the decision referred to by the learned counsel for the appellants/claimants is not applicable to the present case, as the same has not laid down any mandatory dictum as to what should be the notional income to be fixed by the Tribunal. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

15. In the result, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs in the present appeal.

12.09.2023

ksa-2

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

C.M.A. No.1516 of 20



1.The Motor Vehicle Accident Claims Tribunal/
Principal District Court, Namakkal.

2.The Section Officer,
VR Section, High Court, Madras.



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C.M.A. No.1516 of 2018



P.VELMURUGAN. J.

ksa-2

C.M.A. No.1516 of 2018

12.09.2023