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C.M.A.No.1363 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1363 of 2021

1. Gopinathan
S/o.Krishna Pillai

2. Jayakumar
S/o.Gopinath

3. Jeyashree
W/o.Ramakrishnan

... Appellants / Petitioners

Vs.

1. Velmurugan

2. United India Insurance Company Limited,
No.134, Greams Road,
IV Floor, Anna Salai,
Chennai - 600 006.

... Respondents / Respondents

(Since R1 remained ex-parte before the Tribunal, his presence may be dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.08.2020 made in M.C.O.P.No.6945 of 2017 on the file of the Motor Accidents Claims Tribunal-II, Court of Small Causes, Chennai.



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For Appellants : Mr.A.Subadra

For Respondents : Mrs.R.Rathnathara for R2
R1 - Notice dispensed with

J U D G M E N T

This appeal has been filed by the appellants / claimants to enhance the award in M.C.O.P.No.6945 of 2017 on the file of the Motor Accidents Claims Tribunal-II, Court of Small Causes, Chennai wherein the Tribunal has awarded a sum of Rs.5,15,000/- as compensation.

2. On 21.08.2017 at about 11.40 a.m., the first petitioner's wife was waiting to cross the road at Ithiyas Hotel, OMR at Sholinganallur. At that time, a car bearing Registration No.TN-10-U-0009 came on the same road in a rash and negligent manner and dashed against her, as a result of which, she was succumbed to injuries on the same day. The claimants claimed that the negligence is on the part of the driver of the car, i.e., first respondent herein. Further, the deceased was working as a Pastor-cum-Watch woman and was earning a sum of Rs.25,000/- per month. Hence, the claimants claimed a sum of Rs.30,00,000/- as compensation.



3. The Insurance Company resisted the claim contending that the accident was happened due to the negligence of the deceased by walking in the middle of the road and thereby, the deceased was solely responsible for the accident. The Insurance Company further stated that the claimants have to prove that there was a valid policy and there was no violation of policy at the time of accident. Thereofre, the Insurance Company sought for dismissal of the claim petition.

4. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P1 to P11 were marked. The Insurance Company did not let in any evidence either orally or documentary. On the evidence available, the Tribunal came to a conclusion that, the accident had happened due to rash and negligent driving of the first respondent, i.e., driver-cum-owner of the vehicle. Having held that the accident occurred due to rash and negligent driving of the first respondent, the Tribunal concluded that the second respondent / Insurance Company is liable to pay the compensation as the insurer of the said vehicle and awarded a sum of Rs.5,15,000/- as compensation. Not satisfied with the same, the present appeal has been filed by the claimants seeking enhancement.



5. The learned counsel appearing for the appellants / claimants submitted that the Tribunal had erred in awarding a sum of Rs.5,15,000/- as compensation as against the total claim of Rs.30,00,000/-. He further submitted that the Tribunal failed to consider the age and income of the deceased wife. At that time of accident, the deceased was aged about 64 years and was a Pastor-cum-Watch woman at Bethel Church, Sholinganallur and apart from that, the deceased also performed some other Gospel Ministries and earned about a sum of Rs.25,000/- per month as income, whereas the Tribunal fixed income as Rs.10,000/- per month. Further, it is submitted that the compensation awarded under the other heads are also very minimal which requires interference. Therefore, the learned counsel sought for enhancement of compensation.

6. The first respondent / driver of the vehicle remained ex-parte even before the Tribunal, though the first respondent is added as a party respondents to this appeal, notice to the first respondent is hereby dispensed with.



7. The learned counsel appearing for the second respondent /

Insurance Company reiterated the submissions made before the Tribunal and contended that the accident had occurred due to the negligence of the deceased and that the compensation awarded by the Tribunal was excessive and there is no need for enhancement of compensation.

8. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

9. It is seen that Ex.P6-salary slip of the deceased was marked before the Tribunal, where her salary was mentioned as Rs.10,000/- per month and since it was claimed that apart from that, the deceased also performed some other Gospel Ministries and was earning extra amount of Rs.25,000/- per month, this Court is inclined to fix the monthly income as Rs.12,000/- per month. Since the deceased was aged about 69 years at the time of her death, the proper multiplier for her age is 5. Since there are three dependents, $\frac{1}{3}$ rd has to be deducted towards personal expenses. Therefore, the loss of dependency would be Rs.12,000/- x 12 x 5 x $\frac{2}{3}$ ($\frac{1}{3}$ deducted towards



personal expenses) = Rs.4,80,000/-. Further, the parental consortium awarded by the Tribunal is on the lower side, therefore this Court is inclined to fix a sum of Rs.40,000/- each to the appellants 2 and 3. Hence, a sum of Rs.80,000/- is awarded towards parental consortium by this Court. This Court finds that the compensation awarded towards medical expenses, loss of estate and funeral expenses are just and reasonable and does not require any interference.

10. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads are modified as under :-

S.No	Head of Compensation	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of Dependency	Rs.4,00,000/-	Rs.4,80,000/-
2.	Loss of Spousal Consortium	Rs.40,000	Rs.40,000/-
3.	Parental Consortium (each Rs.40,000/-)	Rs.30,000/-	Rs.80,000/-
4.	Medical Expenses	Rs.15,000/-	Rs.15,000/-
5.	Loss of Estate	Rs.15,000/-	Rs.15,000/-
6.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
	Total	Rs.5,15,000/-	Rs.6,45,000/-

11. In the result, this civil miscellaneous appeal is allowed in part and



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the compensation awarded by the Tribunal at Rs.5,15,000/- is hereby enhanced to Rs.6,45,000/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.6945 of 2017 on the file of the Motor Accidents Claims Tribunal-II, Court of Small Causes, Chennai. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn as per the apportionment fixed by the Tribunal by making proper application before the Tribunal. No costs.

22.12.2023

Index :Yes / No

Speaking Order :Yes / No

Neutral Citation Case: Yes / No

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To

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1. The Motor Accidents Claims Tribunal-II,
Court of Small Causes,
Chennai.
2. The Section Officer,
V.R. Section,
High Court,
Chennai.



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M.DHANDAPANI, J.

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