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C.M.A.No.901 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.901 of 2022

1.Kuppammal

2.Pushpa

3.Vishnu

4.Karthick

5.Muniyammal

... Appellants

vs.

1.Mrs.Sucharitha Sundaraj

2.Mrs.B.Jayanthi

3.The Divisional Manager,
Divisional Office – 7,
No.134, Silingi Buildings,
First Floor,
Greams Road,
Chennai – 600 006.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award in Judgment and Decree dated 05.07.2021 made in M.C.O.P.No.16 of 2020 on the file of the Motor Accident Claims Tribunal and Special District Court for Motor Accident



C.M.A.No.901 of 2022

Claims cases, Krishnagiri.

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For Appellants : Mr.S.P.Yuaraj
For R1 & R2 : Exparte
For R3 : Mr.S.Arun Kumar

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J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award in Judgment and Decree dated 05.07.2021 made in M.C.O.P.No.16 of 2020 on the file of the Motor Accident Claims Tribunal and Special District Court for Motor Accident Claims cases, Krishnagiri.

2.The appeal is filed by the claimants seeking enhancement of compensation.

3.The wife, children and mother of the deceased filed the claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Murugan in a motor accident which occurred on 19.11.2017.

4.According to the claimants, while the deceased Murugan was riding pillion in a Hero Splendor motor cycle, the driver of the Toyota car drove



C.M.A.No.901 of 2022

the car in a rash and negligent manner overtook the bike and suddenly stopped in the middle of the road without any indication. The rider of the Motor cycle tried to stop his vehicle, but he could not do so and dashed on the rearside of the car. Due to the impact the deceased Murugan sustained severe injuries on the head, ear region and other vital organs and subsequently died on the way to the hospital.

5. According to the claimants, the deceased was aged 47 years at the time of the accident and he was doing flower and cattle business and he was earning Rs.30,000/- per month. The claimants therefore filed the claim petition claiming Rs.50,00,000/- as compensation.

6. The first and second respondent who were the present and past owner of the car remained exparte before the Tribunal. Hence, the claim petition was contested by the third respondent/Insurance Company. The third respondent/Insurance Company filed a detailed counter denying the negligence, quantum and liability.



C.M.A.No.901 of 2022

WEB COPY

7.Before the Claims Tribunal, the first claimant examined herself as PW1 and the Eye-witness was examined as PW2. Documents Ex.P1 to Ex.P15 were marked in support of the claim petition. The third respondent examined one witness and marked one document.

8.The Claims Tribunal on an assessment of the evidence on record returned a finding of negligence against the driver of the car. The Tribunal on an assessment of the entire evidence on record assessed the compensation for a sum of Rs.15,46,250/- and after deducting 10% towards contributory negligence awarded a compensation of Rs.13,91,625/- along with 7.5% interest and mulcted the liability on the third respondent Insurance company. Not satisfied with the compensation awarded by the Tribunal, the claimants have filed the above appeal for enhancement of compensation.

9.The learned counsel appearing for the appellants submitted that the



C.M.A.No.901 of 2022

assessment of the notional income at Rs.9,000/- by the Claims Tribunal was very much on the lower side, considering that the deceased was aged about 47 years and was doing flower and cattle business. He further submitted that the Tribunal erred in deducting 10% towards compensatory negligence of the deceased overlooking the fact that the deceased was a pillion rider. The learned counsel therefore prayed for enhancement of the compensation.

10.The learned counsel for the third respondent on the other hand submitted that the award of the Tribunal was just, fair and reasonable and did not call for any interference in the appeal.

11.The learned counsel for the respondent fairly submitted that the deduction of 10% towards contributory negligence for non possession of driving licence would not apply to the pillion rider.

12.I have heard both the learned counsel and have perused the materials placed on record.



C.M.A.No.901 of 2022

13. In my view the assessment of the income at Rs.9,000/- by the Tribunal is unsustainable. No doubt that there was no proof of income but considering that the deceased was maintaining a large family of six members, that the deceased was aged 47 years and doing flower and cattle business, in my view the notional income could be assessed at Rs.10,000/- per month. Hence, the notional income of the deceased is fixed at Rs.10,000/- per month. The deceased was 47 years of age and hence 25% is added towards future prospects and $\frac{1}{4}^{\text{th}}$ is deducted towards his personal expenses. $(10000 \times 25/100 = 2500 ; 10000 - 2500 = 7500 ; 7500 \times \frac{1}{4} = 1875 ; 7500 + 1875 = 9375 ; 9375 \times 12 \times 13 = 14,62,500/-)$. The claimants therefore are entitled to Rs.14,62,500/- towards loss of dependency. As conceded by the learned counsel for the respondent, the Tribunal ought not to have deducted 10% towards contributory negligence because the deceased was pillion rider. Non possession of driving licence by the rider of the two wheeler cannot be a ground for deducting 10% of the compensation in a claim by the pillion rider's heirs. The award towards other heads in my view are fair and reasonable.



C.M.A.No.901 of 2022

14.In the light of the said discussion, the award of the Tribunal is modified as follows:

Sl. No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of dependency	Rs.13,16,250/-	Rs.14,62,500/-
2	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-
3	Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
4	Loss of consortium (P1 to P5 Rs.40,000 x 5 = Rs.2,00,000/-)	Rs. 2,00,000/-	Rs. 2,00,000/-
TOTAL		Rs.15,46,250/-	Rs.16,92,500/-

15.The claimants shall be entitled for an enhanced compensation of Rs.16,92,500/- without any deduction along with 7.5% interest. It is submitted by the learned counsel for the third respondent/Insurance company that the award amount along with 7.5% interest and cost has already been deposited. In view of the same, there shall be a direction to the third respondent/Insurance company to deposit the balance enhanced amount of Rs.1,46,250/- along with 7.5% interest, from the date of the claim petition till the date of realisation, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants shall



C.M.A.No.901 of 2022

be entitled to withdraw the said amount as per the apportionment fixed by the Tribunal by making proper application before the Tribunal.

16.In the result, this Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs.

14.06.2023

Index : yes/no

Internet : yes/no

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To

1.The Motor Accident Claims Tribunal and
Special District Court for Motor Accident
Claims cases,
Krishnagiri.

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



WEB COPY



C.M.A.No.901 of 2022

N.MALA, J.

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C.M.A.No.901 of 2022



WEB COPY



C.M.A.No.901 of 2022

14.06.2023