



C.M.A. No. 1505 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1505 of 2021

1. Jothi
 2. Minor Keerthana
 3. Minor Kaviyapriya
 4. Ramakrishnan
 5. Pathmasani
- ... Appellants/ Petitioners

Vs.

1. S. Velmurugan.
 2. M/s. Iffco Tokio General Insurance Co. Ltd.,
Kamban Street, Sangu Pettai,
Perambalur – 621212,
Rep. by its Manager,
Policy No.66003579
- ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 16.10.2020 passed in M.C.O.P. No. 820 of 2018 on the file of the Principal District Judge, Motor Accident Claims Tribunal, Perambalur.

For Appellant	:	M/s. C. Sangamithirai
For R1	:	None printed
For R2	:	M/s. M. Jayaraj



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C.M.A. No. 1505 of 2021

JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No. 820 of 2018, dated 16.10.2020 on the file of the Principal District Judge, Motor Accident Claims Tribunal, Perambalur, wherein the Tribunal has awarded a total compensation for a sum of Rs.13,57,000/- to the claimants along with the interest @ 7.5% per annum from the date of filing of claim petition till the date of realization.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. The claimants herein are the wife, daughters, father and mother of the deceased Sureshkumar and their case is that on 17.08.2018 at about 10:30 PM, the deceased was riding a Hero Super Splender two wheeler bearing Registration No. TN-46-U-7808 and crossed the Chennai - Trichy NH-45 road from east to west and proceeded from south to north on the extreme left hand side of the said road, at that time a Ford Eco Sport car bearing Registration No.TN-10-AQ-0126, proceeding from south to north



C.M.A. No. 1505 of 2021

and driven by its driver in a rash and negligent manner dashed behind the two wheeler of the deceased, which resulted in accident. The deceased succumbed to grievous injuries on the spot. A criminal case in Cr. No.540 of 2018 U/s. 279 and 304(A) of IPC was registered against the driver of the Eco Sport car on the file of Perambalur Police Station. For the loss of deceased Sureshkumar, the claimants have come forward with a claim petition against the respondents seeking compensation for a sum of Rs.35,00,000/- under section 140 and 166 of the Motor Vehicles Act.

4. The first respondent is the owner and the second respondent is the insurer of the Ford Eco Sport car bearing Registration No.TN-10-AQ-0126. The first respondent has not contested the claim petition and remained Ex-parte. The second respondent - Insurance company has filed a counter and contended that the accident was taken place due to the negligent act on the part of the deceased, who suddenly crossed the main road without observing the traffic and invited the accident. The insurance company also contended that the deceased did not wear helmet and has no valid driving licence at the time of accident and disputed the age, income of the deceased and dependency of the claimants, hence prays to dismiss the claim petition.



C.M.A. No. 1505 of 2021

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5. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P.1 to P.9 were marked, on the side of the respondent, no witnesses were examined and no exhibits were marked.

6. Based on the evidence placed on record, the Tribunal in point Nos.1 and 2, has held that the rash and negligence on the part of the driver of the Ford Eco Sport car bearing Registration No.TN-10-AQ-0126 is responsible for the accident and also held that the second respondent - insurance company is liable to indemnify the first respondent - owner of the offending car and to pay the compensation to the claimants. In point no.3, the Tribunal has quantified and granted compensation for a sum of Rs.13,57,000/- to the claimants along with the interest @ 7.5% per annum from the date of filing of claim petition till the date of realization.

7. Aggrieved over the award, the claimants have filed this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimants have



C.M.A. No. 1505 of 2021

submitted the the Tribunal has not properly fixed the notional income of the deceased and the compensation awarded under other heads is also on the lower side. She has also appealed that the claimants have proved the avocation of the deceased that he is a lorry driver but, the Tribunal has fixed the notional income less than the norms followed by this Court for the accident cases taken place in the year 2018. Hence, prays to enhance the quantum of compensation under the head loss of income and also on the other heads.

9. Per contra, the learned counsel appearing for the insurance company has submitted that the Tribunal has properly appreciated the evidence placed on record and awarded a just compensation, hence prays to confirm the award of the Tribunal.

10. I have considered the submissions made on both sides and perused the materials available on record:

11. The Tribunal has accepted the case of the claimants that the negligent driving on the part of the driver of the first respondent is responsible for the accident. The respondents have not filed any appeal



C.M.A. No. 1505 of 2021

against this finding of the Tribunal and it has become final.

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12. The claimants have submitted the salary certificate of the deceased, which is marked as Ex.P.9, wherein it is stated that the deceased was earning Rs.25,000/- per month. But, the claimants have not examined any witness to prove the same. The Tribunal has rightly rejected the Ex.P.9 - salary certificate but fixed the notional income of Rs.10,000/- per month by considering the age and year of the accident. Ex.P.5, driving licence of the deceased shows that the deceased was a heavy vehicle driver, considering the same, date of accident and age of the deceased, the notional income is fixed as Rs.15,000/- per month.

13. The Tribunal has rightly followed the dictum as laid down in *National Insurance Co. Ltd., vs. Pranay Sethi case* reported in **2017(2) TN MAC 609 (SC)** and fixed 10% as future prospectus and as per *Sarla Verma and others Vs. Delhi Transport Corporation and another* reported in **2009 ACJ 1298 SC : 2009 (6) SCC 121**, the multiplier is fixed as '13' by considering the age of the deceased at the time of the accident. On perusal of the Ex.P.5, the driving licence of the deceased, which shows that the



C.M.A. No. 1505 of 2021

deceased is aged about 50 years at the time of accident, hence, this Court finds no infirmity in the above fixing of future prospectus and multiplier adopted by the Tribunal and confirms the same. Since, the claimants herein are five in numbers, deduction of one-fourth (1/4) from the deceased monthly income towards his personal and living expenses would be proper, hence after deduction, the total compensation under loss of dependency is assessed as follows:

Annual income (Rs.15,000/- x 12)	= Rs.1,80,000/-
Future prospects @ 10%	= Rs.18,000/-
Yearly income of the deceased	= Rs.1,98,000/-
Yearly contribution to his family (deduction of 1/4)	= Rs.1,48,500/-
Applicable Multiplier	= 13
Total compensation (Rs.1,48,500/- x 13)	= Rs.19,30,500/-

14. The Tribunal has awarded Rs.40,000/- under the head loss of consortium, but as per the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs Nanu Ram [2018 ACJ 2018]***, all the claimants are entitled to loss of consortium, hence, this Court is inclined to award compensation for a sum of Rs.40,000/- each to the wife, children and parents of the deceased Sureshkumar under the head loss of consortium.

15. Compensation awarded under conventional heads, loss of



C.M.A. No. 1505 of 2021

estate and funeral expenses, the Tribunal has awarded Rs.15,000/- on each heads and the same is in order.

16. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	12,87,000/-	19,30,500/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Loss of Consortium	40,000/-	2,00,000/-	Enhanced
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total Compensation	13,57,000/-	21,60,500/-	Enhanced

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,57,000/- is hereby enhanced to **Rs.21,60,500/- [Rupees Twenty One Lakh Sixty Thousand and Five Hundred only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of realization of compensation amount, excluding the default period, if any. The respondent – insurance company is directed to deposit the amount awarded by this



C.M.A. No. 1505 of 2021

Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P. No.820 of 2018 on the file of the Principle District Judge, Motor Accidents Claims Tribunal, Perambalur. On such deposit, the claimants/ 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. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

13.10.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

K. RAJASEKAR, J.

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C.M.A. No. 1505 of 2021

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To:

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Perambalur.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

C.M.A. No. 1505 of 2021

13.10.2023