



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

CMA.No.1724 of 2018
and CMP.No.950 of 2018

1. Lakshmi
2. Nallaiah
3. Vijaya
4. Annadurai

...Appellants

Vs.

1. P. Aravind
2. United India Insurance Co Ltd.,
Sillingi Building, No.134, Greams Road,
Thousand Lights,
Chennai 600 006.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 30.07.2013 made in M.C.O.P.No.5 of 2012 on the file of the Motor Accident Claims Tribunal, (Chief Small Causes Court), Chennai.

For Appellants : Mr.K. Varadha Kamaraj

For Respondents : M/s.D.Baskaran for R2



WEB COPY

J U D G M E N T

This Civil Miscellaneous Appeal has been filed to enhance the compensation amount awarded in the judgment and decree dated 30.07.2013 made in M.C.O.P.No.5 of 2012 on the file of Motor Accident Claims Tribunal (Chief Small Causes Court), Chennai with interest and costs by allowing this Civil Miscellaneous Appeal.

2. The facts of the case in a nutshell:

On 14.04.2011 at about 19:20 hrs while the deceased was crossing the college road near Sankara Nethralaya Hospital with great care and caution, the motor cycle bearing Reg.No.TN-01-AP-3219 was ridden by its rider in a rash and negligent manner and hit against the deceased and due to that the deceased sustained injuries and succumbed to death on the way to the hospital leaving behind the appellants/claimants as his legal heirs. A case has been registered in Cr.No.149/2011 by R4 Soundara Pandiyanar Angadi Police Station. The deceased was aged 53 years and he was working as Pumpman in M/s.Kathirvel Enterprises (Indian Oil Corporation) Petrol Bunk, Chennai and earned Rs.8,000/- per month and also working as night watchman in



3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the rider of the first respondent's motor cycle bearing Reg.No.TN-01-AP-3219 and directed the respondents 1 and 2, being the owner and insurer of the motor cycle jointly or severally to pay a sum of Rs.5,67,325/- as compensation to the appellants/claimants.

<https://www.mhc.tn.gov.in/judis>



WEB COPY

5. The learned counsel for the appellants/claimants submitted that the claim petition has been filed for the death of one Malaiyandi. Wife, two sons and daughter are the claimants/appellants. According to the claimants/appellants, the deceased was working as a Pumpman in a Petrol Bunk and earned Rs.8,000/- and also worked as a night watchman and earned Rs.4,500/- p.m. and in all earned Rs.12,500/- p.m. The Tribunal in the absence of evidence of employer and also salary certificate on a letterhead has fixed the notional income at Rs.4,500/- added 15% towards future prospectus, deducted 1/4th towards personal and living expenses and applied “11” multiplier and thus granted Rs.5,12,325/- towards loss of pecuniary benefits and Rs.55,000/- under conventional heads and in all granted Rs.5,67,325/- with 7.5% interest as compensation. He further submitted that the income fixed by the Tribunal is meager and the award granted under the head conventional damages is also low. Hence prays for enhancement of compensation.

6. Per contra, learned counsel for the second respondent/Insurance Company submitted that the insured has not intimated about the involvement



of the vehicle in the road accident. The second respondent denies the accident and also denies that the driver of the offending vehicle bearing Reg.No.TN-01-AP-3219 was having valid driving licence and the said vehicle was insured with the second respondent/Insurance Company at the time of accident. The claimants/appellants should prove the age, occupation and income of the deceased and also the place, date and time of the accident. The accident had occurred due to self negligent of the deceased who blindly crossed the road without noticing the traffic. The accident had happened due to the contributory negligence of the deceased. He further contended that in the absence of proof for avocation and income, income fixed by the Tribunal is just and reasonable. Considering the period of accident, award granted under the head conventional damages also reasonable. Hence prayed for dismissal of the appeal.

7. Heard both sides and perused the materials available on record.

8. Considering the year of accident and avocation of the deceased, notional income may be re-fixed as Rs.7,000/- p.m. and considering the fact that the deceased was working in an unorganised sector, only 10% future



prospects warranted in view of Constitution Bench judgment. Thus, the compensation granted by the Tribunal towards loss of pecuniary benefits is modified to Rs.7,62,300/- [Rs.7,000/- + 10% - $\frac{1}{4}$ th x 12 X 11]. The Tribunal has awarded a sum of Rs.10,000/- towards loss of consortium to the first claimant/appellant which is meagre and the same is hereby enhanced to Rs.40,000/- in view of the judgement in the case of ***Magma General Insurance Co.Ltd., Vs. Nanuram @ Chuhru @ Ram & Others*** reported in 2018 18 SCC 130. Under the head loss of love and affection Rs.25,000/- was awarded by the Tribunal and the same is enhanced to Rs.40,000/- each to the claimants/appellants 2 to 4. Likewise, the amount awarded under the heads Funeral expenses Rs.5,000/- and loss of estate Rs.10,000/- are enhanced to Rs.15,000/- respectively. The Tribunal awarded Rs.5,000/- towards transport expenses and the same is confirmed. Thus, the compensation awarded by the Tribunal are modified as follows:

S. No	Heads	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
1	Loss of Pecuniary benefits	5,12,325 (4500+15% - $\frac{1}{4}$ th x12x11 Multiplier)	7,62,300 (7000+10% - $\frac{1}{4}$ th x 12x11 Multiplier)
2	Loss of consortium 1 st claimant	10,000/-	40,000/-



WEB COPY

3	Loss of love and affection to claimants 2 to 4	25,000/-	1,20,000/-
4	Funeral expenses	5,000/-	15,000/-
5	Loss of estate	10,000/-	15,000/-
6	Transport expenses	5,000/-	5,000/-
	Total	5,67,325.00	9,57,300.00

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,67,325/- is hereby enhanced to Rs.9,57,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay the Court fee on the enhanced amount of compensation now determined by this Court. The respondents are jointly and severally directed to deposit the enhanced award amount now determined by this Court, together 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. On such deposit, the appellants are permitted to withdraw their share of the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the



appellants/claimants are not entitled to any interest for the delay period on the amount of Rs.3,89,975/- now enhanced by this Court as per the order of this Court dated 26.07.2018 made in C.M.P.No.950 of 2018 in C.M.A.(SR)No.2210 of 2018. Consequently connected miscellaneous petition is also closed. No costs.

07.02.2023

dpq
Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No



WEB COPY



9

J.SATHYA NARAYANA PRASAD, J.

dpq

To

- 1.The Chief Small Causes Court,
Chennai.
2. The Section Officer
VR Section.

CMA.No.1724 of 2018
and CMP.No.950 of 2018

07.02.2023