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C.M.A.No.67



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.675 of 2022

1. Mariyammal
2. Jayasri
3. Nagaraj

... Appellants

Vs.

- 1.Velraj
- 2.M/s.United India Insurance Co. Ltd.
Represented by its Divisional Office-II (HUB)
104-A, Peramanoor Main Road
Salem District.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 23.09.2019 made in M.C.O.P.No.5 of 2019 on the file of the Special District Court, MCOP Tribunal, Salem.

For Appellants : Mr.M.Guruprasad

For R1 : No appearance

For R2 : Mr.J.Chandran



JUDGMENT

The appeal is filed by the appellants/claimants for enhancement of compensation granted by the Tribunal in the award dated 23.09.2019 made in M.C.O.P.No.5 of 2019 on the file of the Special District Court, MCOP Tribunal, Salem.

2. The brief facts leading to the appeal are that, on 25.07.2018 at about 2.30 p.m., while the deceased Chellappan was travelling in a motor cycle bearing Registration No.TN 50 Y 6387 on Erode – Muthur Road, near Muthaiyan Valasu Rice Mill, from South to North direction, the driver of the van bearing Registration No.TN-33 AQ 4756 belonging to the 1st respondent came in the opposite direction in a rash and negligent manner and dashed against the deceased Chellappan, due to which, the deceased sustained injuries all over his body and died in the hospital. According to the appellants/claimants, the accident took place due to rash and negligent driving of the driver of the van belonging to the 1st respondent. The deceased Chellappan was aged 45 years at the time of accident and as a load man, was earning a sum of Rs.25,000/- per month. Therefore, the widow and children of the deceased Chellappan filed Claim Petition claiming a sum of Rs.48,00,000/- as compensation.

3. Before the Claims Tribunal, the 1st respondent, owner of the van filed a counter denying the negligence as well as quantum of compensation claimed by the



appellants/claimants.

4. The 2nd respondent/Insurance Company filed a detailed counter denying all the averments raised in the Claim Petition apart from denying negligence, liability and quantum of compensation.

5. Before the Claims Tribunal, in support of their claim, the 1st appellant/1st claimant, wife of the deceased examined herself as P.W.1, the eye-witness was examined as P.W.2, one Kuppusamy was examined as P.W.3 and Exs.P1 to P22 were marked. The respondents neither examined any witness nor marked any documents.

6. The Claims Tribunal, on an assessment of the entire evidence on record, returned a finding of negligence against the driver of the van belonging to the 1st respondent, awarded a sum of Rs.15,65,167/- as compensation along with 7.5% interest and directed both the respondents to jointly and severally pay the compensation to the appellants. Not satisfied with the quantum of compensation awarded by the Claims Tribunal, the appellants/claimants have filed the above appeal for enhancement of compensation.

7. Learned counsel for the appellants submitted that the deceased Chellappan

was aged 46 years at the time of accident and was maintaining a family of three



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members and therefore the assessment of notional income at Rs.8,000/- per month by the Tribunal is very much meagre. The learned counsel further submitted that the Tribunal failed to award any compensation towards loss of love & affection to the children of the deceased, the appellants 2 & 3. On these grounds, the learned counsel prayed for enhancement of compensation.

8.Learned counsel for the 2nd respondent/Insurance Company on the other hand submitted that the award of the Tribunal was fair, just and reasonable and did not call for any interference in the appeal.

9. Though notice is served on the first respondent and his name is printed in the cause list, none appears before this Court.

10. I have heard the learned counsel for the appellants and the learned counsel for the 2nd respondent and perused the materials available on record.

11. It is not disputed that the deceased was aged 46 years at the time of accident and was working as a load man. Considering the cost escalation for the year 2018 and also that the deceased was maintaining a family of three members, I am of the view that the assessment of notional income by the Tribunal at Rs.8,000/- per month is unjustified. Hence the notional income of the deceased is fixed at Rs.11,000/- per

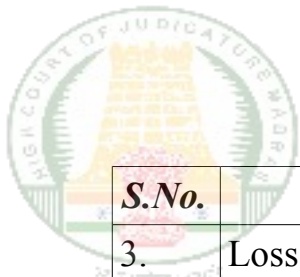


month. The Tribunal erred in adding 30% towards future prospects. As per the judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and others* reported in (2017) 16 SCC 680, 25% is to be added towards future prospects. If 25% is added towards future prospects i.e. Rs.2,750/- (Rs.11,000/- X 25/100), the income would be Rs.13,750/- (Rs.11,000/- + 2750). If 1/3rd is deducted towards personal expenses of the deceased, it comes to Rs.9,167/- (13,750 - 4583). Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.14,30,052/- (Rs.9,167/- X 12 X 13).

12. The learned counsel for the appellants is justified in his contention that the appellants 2 & 3 are entitled to compensation towards loss of love & affection and hence, Rs.40,000/- each is awarded under this head. The award of the Tribunal under the other heads like medical expenses, loss of consortium to the 1st appellant, funeral expenses and loss of estate are just and reasonable and the same are therefore confirmed.

13. In view of the above discussions, the award of the Tribunal is modified as follows:

<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Loss of dependency	Rs.10,81,704/-	Rs.14,30,052/-
2.	Medical expenses	Rs.4,13,463/-	Rs.4,13,463/-



<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
3.	Loss of consortium to the 1 st appellant	Rs.40,000/-	Rs.40,000/-
4.	Loss of love & affection to the appellants 2 & 3	-	Rs.80,000/- (Rs.40,000/- X 2)
5.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
6.	Loss of estate	Rs.15,000/-	Rs.15,000/-
Total Compensation		Rs.15,65,167/-	Rs.19,93,515/- enhanced amount Rs.4,28,348/-

The total compensation is arrived at Rs.19,93,515/-. It is made clear that the enhanced compensation of Rs.4,28,348/- along with 7.5% interest and costs shall be taken only by the 1st appellant/1st claimant, widow of the deceased.

14. It is submitted by the learned counsel for the 2nd respondent/Insurance Company that the entire amount awarded by the Tribunal along with accrued interest and costs was already deposited before the Tribunal. The appellants/claimants are entitled to withdraw their respective share of the amount awarded by the Tribunal, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by making proper application before the Tribunal.

15. In view of the submission made by the learned counsel for the 2nd

respondent/Insurance Company, there shall be a direction to the 2nd
<https://www.mhc.tn.gov.in/judis>



C.M.A.No.67

respondent/Insurance Company to deposit the enhanced compensation of Rs.4,28,348/- along with 7.5% interest (excluding the default period, if any) from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the 1st appellant/1st claimant shall be entitled to withdraw the same along with accrued interest and costs, by making proper application before the Claims Tribunal.

16. The appeal is accordingly partly allowed. There shall be no order as to costs.

15.06.2023

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

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N.MALA.J.,



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To

1.The learned Special District Judge
MCOP Tribunal
Salem.

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

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