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C.M.A.No.1930 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

C.M.A. No. 1930 of 2018

1.Kavitha
2.Minor Lokeshwaran
3.Minor Guruprasad
[Minors 2 and 3 rep.by their
guardian mother Kavitha 1st petitioner herein] ... Appellants

Versus

1.Devi @ Anjalidevi
2.Minor R.Gowtham
3.Minor Sasikumar
[Minors 2 and 3 rep.by next friend
mother Devi @ Anjalidevi, 1st respondent herein]

4.Syed Kalesha
5.Oriental Insurance Co.,Ltd.,
Rep.by its Branch Manager,
3rd party Claim, HUB,
Vijayalakshmi Complex,
1st Floor, Phase II,
32/312, 13rd street,
Sathuvachari,
Vellore, Vellore District. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and decree dated 04.01.2017 passed in M.A.C.T.O.P.No.173 of 2012 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) Vaniyambadi.



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For Appellant : Mrs.M.Tamil Thendral Arasu

For Respondents : Mr.T.S.Baskaran for R1 to R3
No appearance for R4
Mr.Elveera Ravindran for R5

J U D G M E N T

Challenging the award dated 04.01.2017 passed in M.A.C.T.O.P.No.173 of 2012 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) Vaniyambadi, respondents 3 to 5 have filed the above Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The brief facts of the case are as follows :

(i) On 12.08.2012 at night hours, the deceased Ramalingam after attending his work, returning to his house in a motorcycle bearing Registration No.TN-23-BS-7448. When the deceased was driving the motorcycle opposite to TVS Suzuki show room on Hosur-Krishnagiri road, a lorry bearing Registration No.AP-27-X-0456, belonging to the first respondent and insured with second respondent, came on the same direction, in a rash and negligent manner, dashed against the motorcycle of the deceased. Due to the said impact the deceased died on the spot. The accident had occurred only due to



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rash and negligent driving of the driver of the lorry and hence, a case was registered against the driver of the lorry.

(ii) The first claimant is the second wife, and claimants 2 and 3 are minor sons of the deceased. The first respondent is the owner of the lorry and the second respondent is its insurer. The third respondent is the first wife and respondents 4 and 5 are minor sons of the deceased.

(iii) Since respondents 3 to 5 are not willing to join in the claim petition, claimants 1 to 3 filed M.C.O.P.No.173 of 2012, claiming compensation of Rs.20,00,000/- against the owner of the lorry bearing Registration No.AP-27-X-0456 and its insurer M/s.Oriental Insurance Co.,Ltd.

4. The first respondent, who is the owner of the lorry remained *ex-parte* before the Tribunal.

5. Resisting the claim petition, the second respondent/ Insurance Company filed a counter statement before the Tribunal disputing the manner of accident, age, avocation and income of the deceased. It is the specific defence of the Insurance Company that as per the report of the motorcycle inspector, there was no damages to the lorry, however, the front portion of the motorcycle was got damaged. If really the lorry had dashed from behind, the motorcycle would have got damaged in the rear portion, but the report does not show any damage in the rear portion and



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hence, no such accident had taken place on the particular day. Further defence is that the insurer of the two wheeler, who is a necessary party was not impleaded. Hence, the Insurance Company is not liable to pay compensation to the claimants indemnifying the owner of the vehicle/first respondent.

6. Respondents 3 to 5 had filed a counter contending that the first claimant is not the legitimate wife of the deceased Ramalingam. Claimants 2 and 3 can be considered as the dependants and legal heirs of the deceased. In the legal heir certificate the names of respondents 3 to 5 and claimants 2 and 3 are shown as legal heirs of the deceased, but the first claimant name was not included. They have further contended that respondents 3 to 5 were completely depending upon the income of the deceased. Considering the future prospects of the deceased, respondents 3 to 5 and claimants 2 and 3 may be awarded more than Rs.30,00,000/- and in the said amount respondents 3 to 5 are entitled for 70% of the compensation amount and claimants 2 and 3 are entitled for 30% of the share amount.

7. To substantiate the case, on the side of the claimants, the first claimant examined herself as P.W.1 and one eye witness was examined as P.W.2 and Exs.P1 to Ex.P17 were marked. On the side of the respondents, the third respondent was examined as R.W.1 and the Assistant of 2nd respondent/Insurance Company was examined as R.W.2 and Ex.R1 to Ex.R3



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were marked.

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8. The Tribunal, after considering the oral and documentary evidence available on record, awarded compensation of Rs.13,22,000/- along with interest at 6% per annum from the date of claim petition till the date of deposit and directed the second respondent to pay compensation. The break-up details of the amounts awarded by the Tribunal under various heads are as follows :

<i>S.No.</i>	<i>Compensation awarded by the Tribunal under the heads</i>	<i>Amount in Rs.</i>
1.	Loss of dependency	10,50,000
2.	Loss of estate	50,000
3.	Funeral expenses	20,000
4.	Loss of love and affection	1,00,000
5.	Loss of consortium (1 st petitioner and 3 rd respondent)	1,00,000
6.	Transport expenses	2,000
	Total	13,22,000

Out of the total compensation, a sum of Rs.3,61,000/- awarded to the first claimant, a sum of Rs.1,50,000/- each to claimants 2 and 3, a sum of Rs.3,61,000/- awarded to the third respondent and a sum of Rs.1,50,000/- each to respondents 4 and 5.

9. Challenging the above award of compensation, respondents 3 to 5, who are the first wife and minor sons of the deceased have filed the present Civil Miscellaneous Appeal.



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10. The learned counsel for the appellants/respondents 3 to 5 has submitted that though the liability is not in dispute and the accident is also not in dispute, the present appeal has been filed by respondents 3 to 5, who are first wife and minor sons of the deceased, seeking enhancement of the compensation. He further submitted that since the deceased was working as a supervisor in G45 Securities Solutions (India) Private Ltd., Chennai Region and was earning a sum of Rs.10,000/- per month, the Tribunal ought to have fixed the monthly income of the deceased at Rs.10,000/-, instead of Rs.7,000/-. Further, future prospects also not added while computing the compensation amount and also the amounts awarded under all other heads are on the lower side. He further submitted that the Tribunal ought not to have awarded equal compensation to the first claimant (second wife), as she is not a legally wedded wife of the deceased.

11. In support of his contention, the learned counsel for the appellants relied upon the judgment of the Madurai Bench of Madras High Court in the case of *Susila and others Vs. S.Thirumalai and others [CMA (MD).No.681 of 2019]* wherein it is held that the second wife cannot be considered to be a legal representative under the Hindu Succession Act, certainly she is a dependant and as per the decision of the Hon'ble Apex Court she is not entitled to receive equal share in the compensation. The Tribunal has



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not considered the above aspects and decisions of this Court and the Hon'ble Apex Court and simply awarded equal compensation to the first respondent herein, which warrants interference.

12. The learned counsel for respondents 1 to 3/claimants 1 to 3 submitted that admittedly, respondent 1 to 3 herein are the second wife and minor sons of the deceased and the appellants herein are the first wife and minor sons of the deceased. These facts are not disputed. It is contended by the appellants herein that the first respondent (second wife) is not a legitimate wife and that she is not a legal heir of the deceased. Further, the first respondent herein and her minor sons were solely dependant upon the income of the deceased person and the same is evidenced by R.W.1/first appellant herein. The learned counsel for the respondents further submitted that the trial Court has mainly relied upon the Division Bench Judgment of the Karnataka High Court reported in **2016 ACJ 79 (Lalitha Vs. M.R.Sunilkumar and others)** wherein they have held that the second wife could be considered to be a dependant, though she is not a legal representative and she is entitled to receive a share in the compensation. Hence, the first respondent and her sons, who are the dependants of the deceased are entitled for compensation and the Tribunal also rightly awarded compensation to the first respondent and others.

13. The learned counsel for the counsel for the fifth



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respondent/Insurance Company submitted that the Tribunal failed to appreciate the entire oral and documentary evidence and came to the conclusion that the accident had occurred only due to rash and negligent driving of the driver of the lorry and fixed entire negligence on the part of the driver of the lorry. Admittedly, there was no damage caused to the lorry, on the date of accident and the same is evidenced by Ex.R2/RTO report of the lorry, whereas, the front portion of the motorcycle got damaged, which is evidenced by Ex.R3/RTO report of the motorcycle. Further, defence is that the insurer of the two wheeler, who is a necessary party was not impleaded. Hence, the Insurance Company is not liable to pay compensation to the claimants indemnifying the owner of the vehicle/fourth respondent herein.

14. Heard the learned counsel on either side and perused the materials available on record.

15. Despite service of notice, fourth respondent has not chosen to enter appearance either through a counsel or in person.

16. This Court, as appellate Court, and so also, this Court being a fact-finding Court, has analysed the issue independently and re-appreciated the evidence to render an independent finding.



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17. The accident took place on 12.08.2012 and the deceased died on the spot. The claimants and respondents 3 to 5 have stated that the deceased was working as a supervisor in a private concern and earning a sum of Rs.10,000/- per month. Though the employment of the deceased was proved by producing Exs.P10, P11 and P12, there is no evidence to prove the income of the deceased. Considering the same, the Tribunal has fixed the notional income of the deceased at Rs.7,000/- per month. The appellants/respondents have not proved through any contra evidence to show that he was earning a sum of Rs.10,000/- p.m. and this Court finds that there is no perversity in appreciation of evidence by the Tribunal in fixing the notional income at Rs.7,000/- in the absence of any contra evidence. If Rs.7,000/- is fixed as notional income, the annual income comes to Rs.84,000/- [7,000 x 12].

18. Further, the Tribunal failed to add any amount towards future prospects. Hence, considering the age of the deceased, who was 39 years at the time of the accident, 40% of the monthly income has to be added towards future prospects. If so added, the amount comes to Rs.1,17,600/- [84,000 + 33,600]. Since there are 6 dependants, 1/6 of the amount is deducted towards personal expenses, which works out to Rs.98,000/- [1,17,600 – 19,600]. Considering the age of the deceased being 39 years at the time of the accident, the correct multiplier to be applied is "15" and if so applied, the amount comes



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to Rs.14,70,000/- [98,000 x 15]. Thus, the sum of Rs.10,50,000/- awarded by the Tribunal under the head "Loss of Dependency" is enhanced to Rs.14,70,000/-.

19. Further, the Tribunal has awarded a sum of Rs.50,000/- each under the head "Loss of Consortium" to the first claimant/second wife and third respondent/first wife of the deceased, instead of awarding Rs.40,000/- each under such head. Hence, the sum of Rs.50,000/- each awarded by the Tribunal under the head "Loss of Consortium" is set aside, instead a sum of Rs.40,000/- each is awarded.

20. Further, the Tribunal has awarded a sum of Rs.2,000/- under the head "Transport expenses" appears to be on the lower side, and as such, the same is hereby enhanced to Rs.10,000/-.

21. The amounts awarded by the Tribunal under the other heads are just, fair and reasonable, and therefore, they are hereby confirmed.

22. The total compensation is re-determined as mentioned below:

S. No.	<i>Heads under which the compensation is awarded</i>	<i>Amounts awarded by the Tribunal</i>	<i>Amounts awarded by this Court</i>
1.	Loss of dependency	10,50,000	14,70,000
2.	Loss of estate	50,000	50,000
3.	Funeral expenses	20,000	20,000
4.	Loss of love and affection	1,00,000	1,00,000
5.	Loss of consortium (1 st petitioner and 3 rd respondent)	1,00,000	80,000



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S. No.	Heads under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
6.	Transport expenses	2,000	10,000
	Total	13,22,000	17,30,000

23. Thus, the total compensation of Rs.13,22,000/- awarded by the Tribunal is hereby enhanced to Rs.17,30,000/-, which shall carry interest at 6% from the date of claim petition till the date of deposit. The fifth respondent- Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The apportionment of shares fixed by the Tribunal to claimants 1 to 3 and respondents 3 to 5 therein is hereby confirmed. On such deposit, the first claimant and the third respondent are permitted to withdraw their respective shares as per the apportionment fixed by the Tribunal. Insofar as the minor claimants 2 and 3 and respondents 4 and 5 are concerned, their shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Bank and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by their respective mothers once in three months. The appellants/respondents 3 to 5 shall pay necessary Court fee, if any, on the enhanced compensation.



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24. With the above observations and directions, the Civil Miscellaneous Petition is partly allowed. There shall be no order as to costs.

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Index: Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation Case : Yes/No

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To

1. The Subordinate Judge
Motor Accident Claims Tribunal,
Vaniyambadi.

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



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P.VELMURUGAN, J.

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