



C.M.A.No.2000 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2000 of 2021

1. R. Philominleela
2. R. Arun Jegadeesh
3. R. Prabhakaran

... Appellants/Claimants

Vs.

1. Surya Carriers Pvt., Ltd.,
No.16, College Road,
Sona Centre,
Nungambakkam, Chennai – 6.
[R1 remained ex-parte before Tribunal.
Hence notice to R1 dispensed with]

2. New India Assurance Company Limited,
No.232, NSC Bose Road,
L.I.C., Building, 6th Floor,
Chennai – 600 001.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 13.02.2020 made in M.C.O.P.No.7288 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge-II, Small Causes Court, Chennai

For Appellants	:	M/s. M. Malar
For R1	:	Ex-parte before Tribunal
For R2	:	Mr. M. Krishnamoorthy



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JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation against the Award passed in M.C.O.P. No.7288 of 2017, dated 13.02.2020, on the file of the Motor Accidents Claims Tribunal, Special Sub Judge No.II, Small Causes Court, Chennai.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimants are as follows:

The first petitioner is wife and the second and third petitioners are the sons of the deceased Ragunathan, who died in the road accident taken place on 15.03.2017 at about 7.20 hours, while trying to cross Porur to Kundrathur road near Madanandapuram School gate by walk. The first respondent being the owner of the motor-cycle bearing registration No.TN 01 BB 4710, who drove the vehicle rash and negligently and hit on the deceased and caused severe injuries, which resulted in death of the deceased after 1 ½ month from the occurrence of the accident.



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4. The first respondent is the owner of the two-wheeler has not contested the claim and was remained ex-parte. The second respondent has contested the claim and filed counter and challenging the income, age, dependency and also negligence act alleged against the driver of the two-wheeler.

5. Before the Tribunal, on the side of the claimants P.W.1 to P.W.3 were examined and Exs.P1 to P19 were marked. On the side of the second respondent R.W.1 and R.W.2 was examined and Exs.R1 to R4 were marked.

6. Based on the evidences placed on record, the Tribunal in Point No.1 has held that the driver of the two-wheeler has negligently drove the same, which resulted in causing death to the deceased. In Point No.2 the Tribunal has held that the driver of the two-wheeler was a minor at the time of accident and he was not having valid driving licence. Hence, the Tribunal has adopted the Principle of 'Pay and Recover'. In Point No.3, the Tribunal has quantified the compensation and awarded a sum of Rs.8,07,800/- as



compensation.

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7. Aggrieved over the Award passed by the Tribunal, the claimants has come out with this appeal seeking enhancement of compensation.

8. The grievance raised by the claimants herein is that the Tribunal has failed to accept the employment of the deceased who was working as an Accountant in a Firm called M/s.MIY Constructions and he was earning a sum of Rs.20,000/- per month. Even though, the Manager of Firm was examined and exhibits were marked, the Tribunal has rejected the employment of the deceased while awarding compensation and the same is not proper hence prays to set aside the same and to accept the evidence of P.W.3 and awarded compensation as per the claim made by the claimants.

9. The Tribunal has awarded only Rs.2,15,735/- for medical expenses but some of the medical bills were not produced before the Tribunal and that the claimants have separately filed Miscellaneous Petition, requesting to receive additional documents i.e., medical bills for claiming additional medical expenses. This Court, by an Order dated 31.08.2021 in C.M.P.No.10794 of 2021 has permitted the claimants to produce additional



evidence before the Tribunal and also directed the Tribunal to render specific finding regarding the medical bills and forward the finding before this Court. Accordingly, evidences were adduced before the Tribunal by both sides and finding was also rendered by the Tribunal stating that the claimants are entitled for medical expenses for additional sum of Rs.6,98,153/- and totally the claimants are entitled for a sum of Rs.9,13,888/- under the head medical expenses. After receiving the said finding of the Tribunal, the matter is again listed before this Court under the caption for 'final hearing'. The Insurance Company has not raised any grievance regarding the finding given by the Tribunal regarding medical bills. Hence, this Court accepts the award of the Tribunal regarding medical bills as claimed by the claimants.

10. The next point to be considered before this Court is quantum of compensation to be awarded under the head loss of income. The claimants have stated that the deceased was aged about 61 years at the time of accident and the Insurance Company had contended that the age of the deceased was 65 years as mentioned in the Postmortem Certificate. Since Age group between 61 and 65 years, falls within very same multiplier for awarding compensation, this Court has not considered the issue of age of



deceased.

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11. As far as the avocation of the deceased concerned, P.W.3-Manager of a Firm, has reiterated that deceased was working as an Accountant under his Firm and was earning a sum of Rs.20,000/- per month. In the cross examination, it is admitted that Salary Certificate or Statement showing the accounts for payment of salary had not been produced, and deceased is not the subscriber of the Provident Fund. Admittedly, the deceased herein is more than 60 years old, he could not have been legally engaged as an Accountant. Since the deceased is crossed the legal age of employment as Accountant, the burden is heavily on the claimant to show that he was engaged even after the age of 60 years as Accountant. Before the Tribunal, they have marked Ex.P18 which is described as Salary Certificate whereas, it is only a letter declaring that the deceased was employed as an Accountant and was earning a sum of Rs.20,000/- per month but there is no corroborative materials produced to substantiate Ex.P18-Salary Certificate.

12. It is rightly pointed out by the learned counsel for the Insurance Company that P.W.3 was able to produce his Identity Card but no Identity Card or anyother document produced to prove the avocation of the



deceased. This Court is of the view that the Tribunal has rightly rejected the evidence of P.W.3, for proving the avocation and income of the deceased.

The Tribunal has fixed the notional income of the deceased as Rs.7,000/- per month and and this Court is of the view that since the deceased was aged about more than 60 years and the accident had taken place on 15.03.2017, fixing of notional income of Rs.7,000/- is on the lower side and the same shall be fixed as Rs.10,000/- per month. The age of the deceased is 61 years at the time of accident and the Tribunal has rightly applied multiplier '7' as per the Judgment of the Apex Court in ***Sarla varma and Ors v. Delhi Transport Corporation and Another [AIR 2009 SC 3104]***.

13. It is further submitted by the learned counsel for the Insurance Company that the sons of the deceased are not considered as the dependents of the deceased, since, there is an admitted evidence recorded in the cross examination that one of the son namely, Arun Jegadeesh, who is the second claimant was married and was residing in some other place. The Tribunal after analyzing the evidences placed on record has held that all the claimants are entitled for compensation. The claimants herein are wife, and two sons, they are entitled for compensation. Accordingly, deduction towards personal



expenses to be made as $1/3^{\text{rd}}$ of the deceased. Since the deceased is more than 60 years, future prospectus has not been awarded by the Tribunal and as per the Judgment of the Hon'ble Apex Court in ***National Insurance Company Ltd., vs. Pranay Sethi and others [2017 (16) SCC 680]***, the claimants are not entitled for future prospectus. Accordingly, the loss of income calculated as follows: Rs.5,60,000/- [$10000 \times 12 \times 7 \times 1/3$].

14. The Tribunal has also awarded compensation under the head for loss of consortium a sum of Rs.40,000/-, and for loss of estate a sum of Rs.15,000/- and for funeral expenses a sum of Rs.15,000/-. This Court is of the view that as per the Judgment of the Hon'ble Apex Court in ***Magma General Insurance Company ltd., vs. Nanu Ram and others [2018 (18) SCC 130]*** and ***National Insurance Company Ltd., vs. Pranay Sethi and others [2017 (16) SCC 680]***, all the claimants are entitled to get compensation of Rs.40,000/- under the head loss of consortium. The wife of the deceased is entitled to get compensation of Rs.40,000/- for spouse consortium and the son of the deceased/Claimant No.3 is entitled to get parental compensation of Rs.40,000/-. Accordingly, a total sum of Rs.80,000/- is awarded under the head Loss of Consortium. Similarly the



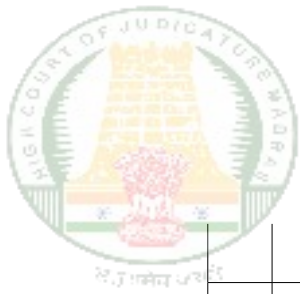
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compensation awarded by the Tribunal under the head loss of estate and funeral expenses are concerned the same is just and reasonable and the same is hereby confirmed.

15. The Tribunal further awarded a sum of Rs.50,000/- under the head loss of love and affection and a sum of Rs.80,000/- awarded as a parental consortium. The Hon'ble Apex Court in ***United India Insurance Co., Limited vs. Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11 SCC 780]*** and ***Magma General Insurance Co. Ltd., vs. Nanu Ram [2018 ACJ 2018]*** held thus compensation awarded under the head Loss of Consortium includes Loss of Love and Affection, Loss of Consortium awarded under the head Loss of Love and Affection is hereby cancelled.

16. Thus, the compensation awarded 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 granted
1.	Loss of Dependency	Rs.3,92,000/-	Rs.5,60,000/-	Enhanced



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2.	Loss of Consortium to Claimants 1 & 3	Rs.40,000/-	Rs.80,000/-	Enhanced
3.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Loss of Love and Affection	Rs.50,000/-	---	Rejected
6.	Parental Consortium	Rs.80,000/-	---	Rejected
7.	Medical Expenses	Rs.2,15,735/-	Rs.9,13,888/-	Enhanced
	Total Compensation	Rs.8,07,735/-	Rs.15,83,888/- -	Enhanced by Rs.7,76,153/-

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.8,07,735/- is hereby enhanced to Rs.15,83,888/- [Rupees Fifteen Lakhs Eighty Three Thousand Eight Hundred and Eighty Eight only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the award amount, now determined by this 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.7288 of 2017, on the file of the Motor Accidents Claims Tribunal, Special Sub Judge-II, Small Causes Court, Chennai. On such deposit, the



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appellants/claimants No.1 to 3 are entitled to withdraw the amount, now awarded by this Court in the ratio of 80 : 20, between mother and Claimant No.3 along with interest and costs. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants without any formal application. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

09.11.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Sub Judge - II,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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K.RAJASEKAR,J.

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