IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.08.2023

Coram

The Honourable Mr.Justice SUNDER MOHAN

C.M.A.No.2026 of 2022

1.Kaliyaperumal
2.Paramasivam
3.Selvi

...Appellants

Versus

1.Sagadevan
2.The General Manager,
Sriram General Insurance Company Ltd.,
C-142, First Floor,
6th Cross, Thillai Nagar,
Trichy – 18.
3.Saravanan
4.The General Manager,
IFFCO TOKIO General Insurance Company Ltd.,
Kamban Street,
Perambalur Taluk & District.

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree of the Motor Accident Claim Tribunal (Principal District and Sessions Court) Ariyalur in M.C.O.P.No.24 of 2019 dated 03.12.2021.

For Appellants	:	Mr.P.Parthikannan
For Respondents – 1 & 3	:	No Appearance
For Respondent – 2	:	Mr.N.Somasundar
For Respondent – 4	:	Mr.S.Arunkumar

JUDGMENT

Challenging the judgment and decree dated 03.12.2021 passed by the Motor Accident Claim Tribunal (Principal District and Sessions Court) Ariyalur in M.C.O.P.No.24 of 2019, the appellants/claimants have preferred the present Civil Miscellaneous Appeal.

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

On 20.02.2018, at around 2.15 p.m, while one Sivamaalai was travelling as a pillion rider in an unregistered new motorcycle driven by her son (3rd respondent) in Jayankondam - Sendhurai Road, a TATA ACE bearing Registration No.TN 46 H 1464 belonging to the 1st respondent driven by its driver coming from the opposite direction of the road dashed the said motorcycle, due to which, the accident had occurred. In the accident, the said Sivamaalai sustained severe injuries and died on the spot and her son (3rd respondent) also sustained injuries. Aggrieved over the death of said Sivamaalai, her husband, son and daughter (appellants/claimants) had filed a claim petition in M.C.O.P.No.24 of 2019 against the 1st respondent (owner of the offending vehicle), 2nd respondent (insurer of the offending vehicle), 3rd respondent (son of the deceased Sivamaalai) and 4th respondent (insurer of the motorcycle drove by 3rd respondent), claiming a sum of Rs.20,00,000/- as compensation.

3. The 2nd respondent/Insurance Company (insurer of the offending vehicle) as well as 4th respondent/Insurance Company (insurer of the motorcycle ridden by 3rd respondent) had filed their respective counter statement in M.C.O.P.No.24 of 2019 denying all the averments made by the appellants/claimants in the claim petition. In the counter statement filed by the 2nd respondent/Insurance Company (insurer of the offending vehicle), it is stated as follows:

(i) The accident had occurred due to the negligence of the 3rd respondent who rode the motorcycle.

(ii) At the time of accident, there was no fitness certificate and also, there was no valid permit for the 1st respondent's vehicle.

(iii) Moreover, at the time of accident, the driver who drove the 1st respondent's vehicle was not having a valid driving license which is in violation of policy condition and hence, the 2nd respondent/Insurance

Company is not liable to pay compensation to the appellants/claimants and the claim petition is liable to be dismissed.

Similarly, in the counter statement filed by the 4th respondent/Insurance Company (insurer of the motorcycle drove by the 3rd respondent), it is stated as follows:

(i) The 4th respondent/Insurance Company is an unnecessary party to the proceedings.

(ii) The 3rd respondent took policy from the 4th respondent/Insurance company and the 4th respondent/Insurance company did not receive any premium for a pillion rider and there is no insurance coverage for the pillion rider in the policy.

(iii) At the time of accident, the deceased Sivamaalai was not wearing helmet and thereby, she breached the Motor Vehicle Act & Rules and hence, the claim petition is liable to be dismissed.

4. Before the Tribunal, on the side of the appellants/claimants, the 1st appellant examined himself as P.W.1 and an eyewitness viz., Ganesan as P.W.2 and 11 documents were marked as Exs.P1 to P11. On the side of the respondents, two witnesses were examined as R.W.1 & R.W.2 and 7 documents were marked as Exs.R1 to R7.

5. On appreciation of oral and documentary evidence produced before it, the Tribunal had arrived at the conclusion that the accident had occurred due to the negligent driving of the driver who drove the 1st respondent's vehicle and fixed the liability on the 2nd respondent/Insurance Company (insurer of the 1st respondent's vehicle). Accordingly, the Tribunal had directed the 2nd respondent/Insurance Company to pay a sum of Rs.1,10,000/- as compensation to the appellants/claimants with accrued interest thereon at 7.5% per annum from the date of petition till the date of realization and thereafter, recover the same from the 1st respondent (owner of the offending vehicle).

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellants/claimants have preferred this appeal before this Court.

7. Mr.P.Parthikannan, learned counsel for the appellants/claimants submitted that the Tribunal had awarded a meagre amount of Rs.1,10,000/- as compensation to the appellants/claimants. He further submitted that though the appellants/claimants had stated before the Tribunal that the deceased Sivamaalai was doing a milk business and she was earning a sum

of Rs.21,000/- per month (Rs.700/- per day), the Tribunal did not grant any compensation under the head, 'Loss of Earning'. He also submitted that the amount awarded under the heads, 'Loss of Love & Affection' and 'Spousal Consortium' are on the lower side and hence, the amount awarded under the said heads may be enhanced.

8. Though the respondents 1 & 3 remained *ex-parte* before the Tribunal, this Court issued notice to them and the same was also served on them. Though the name of respondents 1 & 3 has been printed in the cause list, none appeared on behalf of them.

9. *Per Contra,* Mr.N.Somasundar, learned counsel appearing for the 2nd respondent/Insurance Company submitted that the deceased Sivamaalai was a house wife and she was not doing any job and that the appellants/claimants did not produce any documentary proof to establish the avocation and income of the deceased. Further, the learned counsel drew the attention of this Court to the judgment passed by the Hon'ble Supreme Court in the case of ***Rajendra Singh & Ors. Vs. National Insurance Company Ltd., & Ors*** reported in ***2020 7 SCC 256,*** wherein, it has held as follows:

> *"10. In Arun Kumar Agrawal vs. National Insurance Co. Ltd., (2010) 9 SCC 218, the Tribunal assessed the notional income*

of the housewife at Rs.5,000/- per month, but without any rational or reasoning concluded that she was a non-earning member and reduced the same to Rs.2,500/-, which was affirmed by the High Court. Disapproving the same and restoring the assessed income, this Court observed at Paragraphs 26 and 27 as follows:

> *"26. In India the courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.*
>
> *27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. the husband and children. However, for the purpose of award of compensation to the dependants, some pecuniary estimate has to be made of the services of the housewife/mother. In that context, the term "services" is required to be given a broad meaning and must be*

construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier."

11. The notional income of the first deceased is therefore held to be Rs.5000/- per month at the time of death. The compensation on that basis with a deduction of 1/4th i.e. Rs.15,000/- towards personal expenses with a multiplier of 17 is assessed at Rs.7,65,000/-. If the deceased had survived, in view of observations in Lata Wadhwa (supra), her skills as a matured and skilled housewife in contributing to the welfare and care of the family and in the upbringing of the children would have only been enhanced by time and for which reason we hold that the appellants shall be entitled to future prospects at the rate of 40% in addition to the loss of consortium and future expenses already granted. We therefore assess the total compensation payable to the appellants in the first appeal at Rs.11,96,000/-."

Hence, the learned counsel submitted that even if this Court decides to award compensation under the head, 'Loss of Earning', the notional income of the deceased Sivamaalai may be fixed as Rs.5,000/- since she was 60 years old at the time of accident. He also submitted that amount awarded by the Tribunal towards all other heads are just and reasonable and hence, the same need not to be enhanced.

10. Heard the learned counsel for appellants/claimants and the learned counsel appearing for 2nd respondent/Insurance Company.

11. From a perusal of the materials available on record, it is crystal clear that the accident had occurred due to the negligent driving of the driver who drove the 1st respondent's vehicle. Hence, the Tribunal had fixed the negligence on the driver of 1st respondent's vehicle. Since the 1st respondent's vehicle was insured with the 2nd respondent/Insurance Company and the said insurance policy was in force at the time of accident, the Tribunal had fixed the liability on the 2nd respondent/Insurance Company and directed it to pay the compensation to the appellants/claimants at the first instance and thereafter, recover the same from the 1st respondent, as he did not have a valid driving license (owner of the offending vehicle). Hence, as regards the fixation of negligence as well as liability, the finding of the Tribunal is confirmed by this Court.

12. Now, the only issue to be decided in this case is that whether the quantum of compensation awarded by the Tribunal is just and reasonable?

13. So far as this case is concerned, the appellants/claimants had averred in their claim petition that the deceased Sivamaalai was aged about 55 years at the time of accident, but, Ex.P11 (Ration Card) marked on the side of the appellants/claimants shows that the deceased was born on 15.11.1957. The accident took place on 20.02.2018. Hence, it is clear that the deceased was 60 years old at the time of accident. Though P.W.1 (1st appellant) deposed before the Tribunal that his wife Sivamaalai was doing milk business and she was earning a sum of Rs.21,000/- per month, no documentary evidence was produced on the side of the appellants/claimants to prove the avocation and income of the deceased. Hence, the Tribunal did not award any compensation under the head, 'Loss of Earning'. However, this Court feels that it would be just and appropriate to award reasonable compensation under the head, “Loss of Earning”.

14. Considering the fact that the deceased Sivamaalai was a house wife at the time of accident, this Court decides to follow the dictum laid down by the Hon'ble Supreme Court in the judgment referred above and fix a sum of Rs.9,000/- is fixed as notional income of the deceased. Further, taking note of the year of accident & age of the deceased at the time of

accident, this Court is inclined to add 10% towards Future Prospects of the deceased; deduct 1/3rd towards Personal Expenses of the deceased and apply the multiplier, '9'. Therefore, the compensation under the head, 'Loss of Earning' is calculated as follows:

Rs.9,000 + Rs. 900 (10% of Rs.9,000)	**=**	**Rs.9,900/-**
Rs.9,900 – Rs.3,300 (1/3rd of Rs.9,900)	**=**	**Rs.6,600/-**
Rs.6,600 x 12 x 9	**=**	**Rs.7,12,800/-**

15. The amount awarded by the Tribunal towards the head, 'Loss of Mother' is not just and appropriate. Further, the amount awarded towards the head, 'Loss of Love & Affection' is on the lower side. Hence, this Court decides to delete the head, 'Loss of Mother' and the amount awarded thereunder and enhance the amount awarded under the head, 'Loss of Love & Affection'. Accordingly, the head, 'Loss of Mother' and the amount of Rs.40,000/- awarded thereunder is deleted and the amount of Rs.15,000/- awarded towards the head, 'Loss of Love & Affection' is enhanced to Rs.1,20,000/- (Rs.40,000/- each to the appellants 2 & 3 and 3rd respondent).

16. The compensation awarded by the Tribunal towards the heads, 'Spousal Consortium' and 'Funeral Expenses' are just and reasonable and

hence, the same are confirmed. The break-up details of the enhanced compensation are as follows:

Sl.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award Confirmed or Enhanced or Granted or Deleted
1	Loss of Earning	---	Rs.7,12,800/-	Granted
2	Loss of Mother	Rs.40,000/-	---	Deleted
3	Loss of Love & Affection	Rs.15,000/-	Rs.1,20,000/-	Enhanced
4	Spousal Consortium	Rs.40,000/-	Rs.40,000/-	Confirmed
5	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
Total		Rs.1,10,000/-	Rs.8,87,800/-	Enhanced by Rs.7,77,800/-

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.1,10,000/- awarded by the Tribunal is enhanced to Rs.8,87,800/- (Rupees Eight Lakhs Eighty Seven Thousand and Eight Hundred only). The appellants/claimants and the 3rd respondent are entitled to get equal share in the enhanced compensation amount awarded by this Court. The 2nd respondent is directed to deposit the enhanced award amount of Rs.8,87,800/-, after deducting the amount(s), if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit (excluding the default period if any), to the credit of M.C.O.P.No.2026 of 2022, within a period of six weeks from the date of

receipt of a copy of this judgment. On such deposit being made, the appellants/claimants and the 3rd respondent are permitted to withdraw the said amount, as per the apportionment ordered by this Court. The appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced award amount. No costs.

01.08.2023

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

1.The Judge,
Motor Accident Claim Tribunal (Principal District and Sessions Court), Ariyalur.

2.The Section Officer,
Vernacular Records Section,
High Court, Madras.

SUNDER MOHAN, J.

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C.M.A.No.2026 of 2022

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