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CMA No.339 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.02.2023

PRONOUNCED ON : 17.03.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.339 of 2023

Pavathal (Died)

1. Selvi

2. Marimuthu

.. Appellants/petitioners

Vs.

1. Thirumurugan

2. Selvaraj

3. The Reliance General Insurance Co. Ltd.,

Sakthi Super Market, 3rd Floor, 408,

Perundurai Road, Erode – 638 011

.. Respondents

[Cause title accepted vide Court order dated 30.01.2023 made in CMP No.635 of 2023 in CMA SR.No.48946 of 2022 by TKRJ]

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to enhance the award dated 10.12.2021 passed in MCOP No.655 of 2018 on the file of the Motor Accident Claims Tribunal [Special District Judge], Erode.

For Appellants : Mr.C.Paraneedharan

For Respondents : Mr.P.Suresh Srinivasan (for R3)



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JUDGMENT

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Claim petitioners are the appellants herein seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal (Special District Judge), Erode, vide judgment and decree dated 10.12.2021 in MCOP No.655 of 2018.

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

3. The factum of the accident, the manner of the accident and the negligence on the part of the driver of the offending vehicle, are not disputed and hence, the findings of the tribunal are confirmed.

4. On the point of quantum of compensation both the parties are heard.

5. Main contention of the learned counsel for the appellants/claim petitioners, is that the claims tribunal by fixing a lesser income i.e. Rs.10,000/- as notional income of the deceased-Muthusamy, who was doing



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Rig lorry business and earning 1,00,000/- per month, has awarded a meagre sum of Rs.4,00,020/- as pecuniary loss and hence, he seeks for enhancement.

6. Perusal of the award reveals that the 1st claim petitioner is the widow of the deceased Muthusamy. As per Ex.P5 to Ex.P7 viz., the Acknowledgment for filing Income Tax Returns of the years 2016-17, 2017-18 and 2018-19 respectively, the Date of Birth of the deceased is 09.03.1949 and the date of the accident is 24.04.2018 and accordingly, the trial Court has fixed the age of the deceased as 69. In Ex.P5, Ex.P6 and Ex.P7, there is no indication that he has received any salary. In the cross examination, the PW1/3rd claim petitioner/son of the deceased has admitted that even during the life time of the deceased, he was looking after the business and hence, the trial Court has rightly come to the conclusion that the rig lorry business was conducted by PW1 and accordingly, fixed the notional income of the deceased as Rs.10,000/- per month. However, taking into consideration the date of accident i.e., 24.08.2018, I find that the notional income may be fixed as R.14,000/- per month. Further, since the deceased is already 69 years old at the time of the accident, as per *National*



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Insurance Company Limited Vs. Pranay Sethi, reported in 2017 (16) SCC

680, he is not entitled for future prospects. The right multiplier as per ***Sarla***

Varma Vs. Delhi Transport Corporation Ltd., reported in **TNMAC 2009**

(2) SC is '5' and 1/3rd deduction is made towards the personal and living expenses of the deceased as there are three dependants. Thus, the pecuniary loss accessed by the claims tribunal, is reassessed as under.

$$\begin{aligned}\text{Pecuniary loss} &= \text{Rs.14,000/-} \times 12 \times 5 \times 2/3 \\ &= \text{Rs.5,60,000/-}\end{aligned}$$

Accordingly, a sum of Rs.5,60,000/- is awarded under the head 'pecuniary loss', as against Rs.4,00,020/- awarded by the tribunal. Except the above head, the award of the tribunal under other heads, is just and reasonable and hence, the same is confirmed.

7. In view of the above discussion, the award of the tribunal is enhanced from Rs.5,50,020/- to Rs.7,10,000/- as detailed hereunder.

Pecuniary loss	= Rs. 5,60,000/-
Loss of consortium to wife	= Rs. 40,000/-
Loss of love and affection to son and daughter @ Rs.40,000/- each	= Rs. 80,000/-
Loss of Estate	= Rs. 15,000/-
Funeral Expenses	= <u>Rs. 15,000/-</u>



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Amount now awarded = Rs. 7,10,000/-

Amount awarded by the Tribunal = Rs. 5,50,020/-

Enhanced Amount = Rs. 1,59,980/-

8. In the result, it is ordered as follows:

- (i) The judgment and decree dated 10.12.2021, made in MCOP No.655 of 2018 on the file of the Motor Accident Claims Tribunal [Special District Judge], Erode, stands modified to the limited extent that the compensation of Rs.5,50,020/- awarded by the claims tribunal is enhanced to Rs.7,10,000/- and the interest awarded by the claims tribunal and apportionment as regards original award, remains unaltered.
- (ii) It appears that during the pendency of the appeal, the 1st claim petitioner/wife of the deceased had died. Therefore, Out of the compensation now awarded i.e., Rs.1,59,980/-, the appellants 1 & 2/daughter and son of the deceased are entitled to equal share.
- (iii) Additional Court fee, if any, to be paid by the claim petitioners within a period of four weeks and decree to be drafted after the payment of Court fee.
- (iv) The 3rd respondent-Insurance Company is directed to deposit



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the enhanced compensation amount of Rs.7,10,000/- with proportionate interest and costs to the credit of MCOP No.655 of 2018 on the file of the Motor Accident Claims Tribunal [Special District Judge], Erode, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any.

- (v) On such deposit, the appellants/claim petitioners, are permitted to withdraw the enhanced award amount, as apportioned above, on making necessary applications.

9. With the above directions, the Civil Miscellaneous Appeal stands partly allowed. No Costs.

17.03.2023

Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No.
ars

To
The Special District Judge,
Motor Accident Claims Tribunal, Erode.



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RMT.TEEKAA RAMAN,J.,

ars

Pre-delivery Judgment in
CMA No.339 of 2023

17.03.2023