



C.M.A.No.1467 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 20.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

CMA.No.1467 of 2022

- 1.Suthagar (died)
- 2.Amudha
- 3.Ajith
- 4.Archana

... Appellant

Vs.

- 1.Vengatesan
- 2.The Manager,
Reliance General Insurance Company Limited,
Reliance House,
4th Floor, No.6, Haddows Road,
Nungambakkam,
Chennai- 600 034.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 praying to enhance and set aside the Award and Decree dated 01.10.2021 and made in M.C.O.P.No.435 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvannamalai.

For Appellants : M/s.M. Malar

For R-1 : Ex-parte

For R-2 : Mr.P. Suresh Srinivasan



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JUDGMENT

This appeal is filed to enhance and set aside the award against the Judgment and Decree dated 01.10.2021 and made in M.C.O.P.No.435 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvannamalai.

2. The appeal is filed by the claimants seeking enhancement of compensation. According to the claimants, they are the brothers and sister of the deceased Prabhakaran, who died in a motor accident which occurred on 08.06.2018. On 08.06.2018, while the deceased was walking on the road, the first respondent's lorry driven by its driver in a rash and negligent manner, dashed against the deceased causing him grievous injuries, due to which, he died on the way to the hospital.

3. According to the claimants, the deceased was aged 28 years at the time of the accident and as an Auto driver, he was earning Rs.20,000/- per month. The claimants therefore filed the claim petition seeking Rs.50,00,000/- as compensation for the death of their brother.



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4. The first respondent remained ex-parte before the Claims Tribunal and the claim petition was contested by the second respondent/Insurance company.

5. The second respondent/Insurance company filed detailed counter affidavit denying all the averments made in the claim petition, apart from disputing the negligence, quantum and liability.

6. The claims Tribunal, on an assessment of entire evidence on record, rendered a finding of negligence against the first respondent's lorry driver, awarded a sum of Rs.14,75,200/- along with 7.5% interest as compensation to the claimants and mulcted the liability on the second respondent/Insurance company. Not satisfied with the award passed by the Claims Tribunal, the claimants have filed the above appeal for enhancement of compensation.

7. The learned counsel for the claimants submitted that the assessment of notional income by the Claims Tribunal was erroneous. The learned counsel further submitted that the driving licence of the deceased was marked as Ex.P.4 to show that the deceased was working as an Auto driver. In spite of the said evidence, the Tribunal assessed the notional income at Rs.9,000/- per month.

The learned counsel fairly submitted that the award under the other heads was



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fair and reasonable and so, the same was not agitated in the appeal.

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8. The learned counsel for the second respondent/Insurance company, on the other hand submitted that the award passed by the Claims Tribunal was just, fair and reasonable and did not call for any interference by this Court.

9. I have heard both the learned counsels and have perused the materials placed on record.

10. It is seen from Ex.P.4, driving licence of the deceased that he was holding LMV licence at the time of accident. The deceased did not possess a “badge” to drive a passenger Auto. The Tribunal, in the light of Ex.P.4, assessed the income of the deceased at Rs.9,000/- per month. In my view, considering the age of the deceased, the year of accident and the cost escalation for the year 2018, the income of the deceased can be fixed at Rs.10,000/- per month. 40% is added towards future prospects and 50% is deducted towards personal expenses of the deceased. Therefore, the award towards loss of income is arrived at Rs.14,28,000/- $(10,000 \times 40/100 = 4000 + 10000 = 14000 \times 12 \times 17 = 28,56,000/2 = 14,28,000/-)$



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11. It is submitted by the learned counsel for the second respondent/Insurance company that the first claimant died and therefore, the award towards loss of consortium to the first claimant shall be deducted. In view of the same, the loss of Filial consortium for the claimants 2, 3 and 4 is fixed at Rs.1,20,000/- (40,000 x 3 = 1,20,000/-). The award towards other heads, i.e. loss of estate and funeral expense are confirmed.

12. In view of the above, the award of the Claims Tribunal is modified as follows:

<i>S.No.</i>	<i>Various Heads</i>	<i>Award by Tribunal (amount in Rs.)</i>	<i>Award by this Court (amount in Rs.)</i>
1.	Loss of Income	12,85,200/-	14,28,000/-
2.	Loss of Filial Consortium	1,60,000/-	1,20,000/-
3.	Loss of Estate	15,000/-	15,000/-
4.	Funeral Expenses	15,000/-	15,000/-
Total Compensation		14,75,200/-	15,78,000/-

13. The second respondent/Insurance company is directed to deposit the entire compensation of Rs.15,78,000/- along with 7.5% interest from the date of claim petition till the date of deposit within a period of eight (8) weeks from the date of receipt of a copy of this Judgment, less, the amount, if any, already deposited. On such deposit being made, the claimants are entitled to withdraw the same and the apportionment of award to the claimants shall be as fixed by



the Tribunal.

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In the result, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

20.06.2022

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Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

To

1.The Special Sub Court,
Motor Accident Claims Tribunal,
Thiruvannamalai.

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



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N.MALA.J.,

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