



C.M.A.No.2083 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2083 of 2021

1. P. Varatharasu

2. P. Rajammal

... Appellants/Claimants

Vs.

1. E. Raja

2. The National Insurance Company Limited,
Selvanayagi Complex,
Perundurai Road,
Near to District Collector Office,
Erode – 638 011.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 18.01.2021 made in M.C.O.P.No.4 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode.

For Appellants : Mr. S. P. Yuvaraj

For R1 : No appearance

For R2 : M/s. N. B. Surekha



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JUDGMENT

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The Civil Miscellaneous Appeal has been filed by the claimants for enhancement of compensation against the award passed in M.C.O.P.No.4 of 2018, dated 18.01.2021, on the file of the Motor Accident Claims Tribunal, Special District Court, Erode, for the death of their son in the road accident.

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

3. The case of the claimants is that on 05.05.2017 at about 11.30 p.m., the deceased namely Dhinesh Kumar was crossing the Namakkal to Salem National Highways near Pudhansanthai Jayanthi Colony opposite to Sri Sakthi School, at that time a car namely Honda City bearing Registration No.TN 88 8899 driven by its driver in rash and negligent manner and suddenly entered into the road and hit on the deceased, which resulted in causing grievous injuries to the deceased and on the next day he died. In this regard, a criminal case was also registered in Crime No.159 of 2017 under Sections 279, 304(A) IPC against the driver of the car on the file of the Nallipalayam Police Station. Originally, the claimants have made a



claim seeking for compensation of Rs.10,00,000/- and subsequently, they have filed Amendment Petition to amend the claim amount to the extent of Rs.25,00,000/- under Section 166 of the Motor Vehicles Act.

4. The first respondent who is the owner of the car was not contested the claim and was remained ex-parte.

5. The second respondent who is the insurer of the car has contested the claim, contended that the driver of the car drove the same in moderate speed and very cautious manner. However suddenly and unexpectedly the deceased had entered into the road for crossing inspite of best efforts of the driver, the car hit on the deceased which resulted into accident, hence the respondents are not liable to pay compensation. They have also disputed the income, age of the deceased and other factual aspects stated in the petition.

6. Before the Tribunal, the claimants have examined P.W.1 and P.W.2 and Exs.P1 to P9 were marked. On the side of the respondents no oral and documentary evidence marked.



7. Based on the evidence placed on record, the Tribunal in Point

No.1 has held that the driver of the car has negligently drove the vehicle caused the accident, hence the car driver is responsible for the accident. In Point No.2 the Tribunal has quantified the compensation and awarded a sum of Rs.15,38,000/- as compensation.

8. Aggrieved over the quantum of compensation awarded, the claimants have come forward with this appeal seeking enhancement of compensation.

9. The learned counsel for the claimants has submitted that notional income fixed by the Tribunal is not in accordance with the norms followed by this Court. In this case, the age of the deceased is 26 years and the Tribunal has awarded Rs.10,000/- as notional income which is on the lower side, hence prays to enhance the award. He has also contended that the compensation awarded under various other heads is also on the lower side and prays to revise the same.

10. The learned counsel for the Insurance Company has vehemently contended that the Tribunal has fixed the quantum of



compensation based on the evidence placed on record and the Tribunal has awarded compensation under various other heads is just and reasonable and the interest awarded is also on the higher side hence prays to modify the same.

11. I have considered the rival submissions made on both sides and also perused the records available on record.

12. Before the Tribunal, the mother of the deceased was examined as P.W.1 and deposed that the deceased was a Mason and was earning a sum of Rs.25,000/- per month as monthly income however they have neither examined the employer nor produced any documentary proof. The Tribunal instead of fixing the compensation, based on the age of the deceased and date of accident, fixed the notional income as Rs.10,000/-. The accident was taken place in the year 2018 and the deceased was aged about 26 years and was graduate hence, this Court is of the view that fixing notional income of Rs.12,000/- per month would be appropriate monthly income.

13. 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 entitled for 40% towards future prospects.



The dependents of the deceased are two in number hence 1/2 deducted as personal expenses of the deceased and the applicable multiplier is '17' the compensation is arrived as Rs.17,13,600/-[12000 + 4800 (40% of 12000) x 12 x 17 x 1/2]. As far as the compensation awarded under the other heads are concerned, the Tribunal has awarded reasonable compensation as per the norms followed and hence this Court is not inclined to modify the same.

14. In *Tamil Nadu State Transport Corporation Ltd., vs. S. Rajapriya* [AIR 2005 SC 2985], the Hon'ble Apex Court has held that rate of interest on bank deposits and directed for lowering the rate of interest fixed by the Tribunal at 9% per annum and altered the same to 7.5% per annum. By following the Division Bench Judgment of the Apex Court in *Tamil Nadu State Transport Corporation Ltd., vs. S. Rajapriya* cited supra, this Court is inclined to grant interest at the rate of 7.5%. Accordingly, the rate of interest fixed by the Tribunal at 9% per annum is hereby modified to 7.5% per annum.

15. Thus the compensation awarded by the Tribunal is modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or rejected
1.	Loss of income	Rs.14,28,000/-	Rs.17,13,600/-	Enhanced
2.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Filial Consortium	Rs.80,000/-	Rs.80,000/-	Confirmed
	Total Compensation	Rs.15,38,000/-	Rs.18,23,600/-	Enhanced by Rs.2,85,600/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.15,38,000/- is hereby enhanced to Rs.18,23,600/- [Rupees Eighteen Lakhs Twenty Three Thousand and Six Hundred 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.4 of 2018, on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode. On such deposit, the appellants/claimants are entitled to withdraw the amount, now awarded by this Court, along with interest and costs, as per the



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apportionment fixed by the Tribunal, less the amount if any, already withdrawn. 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.

02.11.2023

ssi

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special District Judge,
Motor Accidents Claims Tribunal,
Erode.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K.RAJASEKAR,J

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