



WEB COPY



C.M.A.No.1405 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE N.MALA

C.M.A.No.1405 of 2020

and

C.M.P No.2204 of 2023

1.P.Nagaveni

[Amended as P.Nagaveni instead of
P.Nagamani vide Court order dated
27.03.2023 made in CMP.No.11509of
2022]

2.P.Ruban Kumar

..Appellants

Vs.

1.S.Jaganathan

2.P.Sivakumar

3.The Branch Manager,
M/s.Bajaj Alliance General Insurance Co. Ltd.,
11, Peoples Park 3rd Floor,
Government Art College Road,
Coimbatore – 18.

[Amended as per order dated 27.03.2023
made in CMP.No.11509 of 2022]

..Respondents



C.M.A.No.1405 of 2020

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, for enhancement of compensation awarded by the judgment and decree dated 31.01.2020 made in MCOP.No.511 of 2013 on the file of the learned Motor Accident Claims Tribunal, Chief Judicial Magistrate, Coimbatore.

For Appellants : Mr.N.Manoharan

For Respondents : Mr.J.Michael Visuvasam for R3
R1 and R2 - Exparte

J U D G M E N T

This appeal is filed challenging the judgement and decree dated 31.01.2020 made in MCOP.No.511 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Coimbatore. The appeal is filed by the appellant who was the claimant before the Claims Tribunal seeking enhancement of compensation.

The summary of fact leading to the appeal are as follows:-

2. On 03.03.2012 when the deceased was riding his motorcycle, a Mahindra Van belonging to the 2nd respondent was driven by its driver in a rash and negligent manner. The van hit the motorcycle of the deceased causing him severe head injury. According to the



C.M.A.No.1405 of 2020

claimants, the deceased was aged 44 years at the time of the accident and was employed as Manager in Nilgiri Garden Property, Coimbatore, earning a sum of Rs.20,000/- per month. Hence, the claimants filed the claim petition claiming a sum of Rs.37,00,000/- as compensation.

3. The 1st and 2nd respondents remained *ex parte* before the Court below and the claim was contested by the 3rd respondent. The 3rd respondent filed a counter denying all the allegations and contentions raised in the claim petition.

4. Before the Claims Tribunal, three witnesses were examined and Exs.P1 to P19 were marked on the side of the appellants and on the side of the respondents neither any witness was examined nor any document was marked.

5. The Claims Tribunal on an assessment of entire evidence on record found negligence against the driver of the 2nd respondent and determined the compensation at Rs.11,90,000/- along with 7.5% interest and mulcted the liability on the 3rd respondent. Not satisfied with the



C.M.A.No.1405 of 2020

quantum of compensation awarded by the Claims Tribunal, the appellants filed the instant appeal.

6. The learned counsel for the appellants submitted that the Claims Tribunal erred in rejecting the salary certificate, Ex.P19 filed by the claimants. According to the learned counsel, PW3 employer of the deceased was examined to prove the salary certificate and therefore the Claims Tribunal miserably erred in rejecting Ex.P19, salary certificate. The learned counsel submitted that even otherwise the income fixed by the Claims Tribunal at Rs.6,500/- per month was very meager under the facts and circumstances of the case. The learned counsel therefore prayed that the award towards loss of dependency is to be enhanced.

7. The learned counsel for the 3rd respondent on the other hand submitted that the award passed by the Claims Tribunal was fair, just and reasonable and does not call for interference in the appeal.

8. I have heard both counsel and perused the materials placed on record. It is seen that the salary certificate Ex.P19 was issued on



C.M.A.No.1405 of 2020

21.08.2019, long after the date of accident which occurred on 03.03.2012. It is further pertinent to note that PW3, who was said to be the employer of the deceased also happened to be the brother of the deceased. PW3 in his evidence states as follows:-

பழனிச்சாமி என்னிடம் வேலை பார்த்தபோதோ, இறந்த பிறகோ சம்பள சான்று கொடுக்கவில்லை. என தம்பி மகன் 3, 4 மாதங்களுக்கு முன்பு கேட்டதால் கொடுத்தேன்.

9. It is therefore evident from the evidence of PW3, who is the employer of the deceased that the salary certificate was given for the purpose of claim. In the light of the said evidence, the Tribunal has rightly rejected the salary certificate.

10. It is submitted by the learned counsel for the 3rd respondent that as the deceased studied IX Standard, the notional income fixed at Rs.6,500/- by the Tribunal was not justified. In my view as the accident took place in 2012, considering the conditions prevailing in 2012, he notional income fixed at Rs.6,500/- by the Tribunal is very meagre. I am therefore of the view that considering the entire facts and circumstances of the case, the income of the deceased can be fixed at Rs.12,000/- per



C.M.A.No.1405 of 2020

month, to which 25% of the income is to be added towards future prospects and 1/3rd has to be deducted towards the personal expenses of the deceased. The multiplier of 14 is adopted, which is appropriate for the age of the deceased. Therefore, the loss of dependency is arrived as follows:-

Loss of dependency:

$$12,000 + (25\% \text{ of } 12,000) = 12,000 + 3,000$$

$$= 15,000$$

$$15,000 \times 12 = 1,80,000$$

$$1,80,000 \times 1/3 = 60,000 \quad (-)$$

$$= 1,20,000/- \times 14$$

$$= 16,80,000/-$$

11. It is seen that the Tribunal has awarded Rs.40,000/- towards consortium to the 1st claimant alone. I am of the view that the 2nd claimant as the son of the deceased is also entitled to Rs.40,000/- towards consortium. In the light of the said discussion the award of the Tribunal



C.M.A.No.1405 of 2020

is modified as follows:-

Heads	Amount awarded by Tribunal	Amount awarded in the appeal
Loss of Future Income	Rs.11,20,000/-	Rs.16,80,000/-
Loss of Consortium	Rs.40,000/-	Rs.80,000/-
Loss of Estate	Rs.15,000/-	Rs.15,000/-
Funeral Expenses	Rs.15,000/-	Rs.15,000/-
Total	Rs.11,90,000/-	Rs.17,90,000/-

12. Accordingly, the claimants shall be entitled to the enhanced compensation of Rs.17,90,000/- along with 7.5% interest.

13. It is submitted by the learned counsel for the 3rd respondent that the entire award amount along with interest was already deposited before the Court below. Therefore, a direction is issued to the 3rd respondent to deposit the balance amount of Rs.6,00,000/- along with interest at 7.5% per annum from the date of claim petition till date of payment within a period of six (6) weeks from the date of receipt of a copy of the order.

14. The apportionment of compensation shall be at Rs.15,00,000/- to the 1st claimant that is widow of the deceased along



C.M.A.No.1405 of 2020

with 7.5% interest and Rs.2,90,000/- along with 7.5% interest to the 2nd claimant.

15. In the result the appeal is **partly allowed.** No costs.

Consequently, the connected miscellaneous petition is closed.

27.04.2023

dsa

Index :Yes/No

Internet :Yes/No

Neutral Citation :Yes/No

Speaking order/Non-Speaking order



C.M.A.No.1405 of 2020

To:-

WEB COM The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Coimbatore.



WEB COPY



C.M.A.No.1405 of 2020

N.MALA, J.

dsa

C.M.A.No.1405 of 2020

27.04.2023