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C.M.A.No.1524 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.1524 of 2022

E.Esakkiraj (Died)

1.Tmt.Velammal

2.Selvi.E.Anu Jeyashree

3.Minor E.Vishnu

... Appellants

vs.

1.S.Isravel

2.OM Plast, having its office at L3,
Sidco Industrial Estate,
Chennimalai Road,
Erode Taluk, Erode District,
Erode – 638 001.

3.The Oriental Insurance Company Ltd.,
Having its Branch Office at No.59,
Raja Street, Gobichettipalayam,
Erode District – 638 476.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount made in Judgment



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and Decree dated 14.07.2017 made in M.C.O.P.No.76 of 2016 on the file of the Motor Accident Claims Tribunal Special Subordinate Judge, Erode by allowing this Civil Miscellaneous Appeal.

For Appellants : Mr.S.P.Yuvaraj

For R1 : No appearance

For R2 : No appearance

For R3 : Mr.M.J.Vijayaraghavan

* * * * *

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the claimants to enhance the compensation amount made in Judgment and Decree dated 14.07.2017 in M.C.O.P.No.76 of 2016 on the file of the Motor Accident Claims Tribunal Special Subordinate Judge, Erode by allowing this Civil Miscellaneous Appeal.

2.For the sake of convenience parties will be referred to as per the ranking in the Claims Tribunal.

3.On 27.11.2015 at about 10.30 p.m. while the first claimant was riding his motorcycle from Karur to Kodumudi, an Eicher van came in the



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same direction and hit the 1st claimant's motorcycle from behind. The first claimant fell down and sustained grievous head injuries and also bone fracture. The 1st claimant succumbed to the injuries sustained by him in the motor accident and therefore the claim petition was continued by the claimants 2 to 4 as the legal heirs of the deceased 1st claimant.

4.The first respondent in the Claim petition remained ex-parte before the Tribunal and the claim petition was contested by the second respondent / owner of the vehicle and the third respondent/Insurance company. The second respondent denied all the averments made in the claim petition and stated that as the vehicle was insured with the third respondent, Insurance Company, the third respondent/insurance company was liable to indemnify the second respondent. The third respondent / Insurance Company filed it's counter denying all the averments made in the claim petition, apart from disputing the negligence, quantum and liability.

5.Before the Claims Tribunal, the claimants examined PW1 to PW4 and marked Ex.P1 to Ex.P39 in support of their claim. On the side of the



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respondents no witnesses were examined and no exhibits were marked.

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6.The Claims Tribunal on an assessment of the entire evidence on record returned a finding of negligence against the first respondent. The Claims Tribunal assessed the compensation at Rs.20,02,900/- along with 7.5% interest and mulcted the liability on the third 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 appearing for the claimants submitted that the Tribunal failed to award compensation towards the loss of estate, future prospectus at 25%, attender charges, and also for pain and suffering. The Tribunal failed to note that the claimants were entitled to just and fair compensation. According to the learned counsel the Tribunal failed to consider the above aspects which were to be considered while determining compensation. The learned counsel for the claimants further submitted that the assessment of notional income at Rs.6,500/- was very much on the lower side. Considering that the claimants had spent Rs.9,39,900/- towards



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medical expenses of the deceased, the income claimed at Rs.25,000/- per month ought to have been accepted. The learned counsel therefore prayed that the appeal may be allowed.

8.The learned counsel for the third respondent on the other hand submitted that as the deceased was not wearing helmet, the Tribunal ought to have deducted 10% towards the contributory negligence of the deceased. The learned counsel further submitted that the award under the heads of loss of love and affection and loss of consortium at Rs.3,00,000/- was against the Judgment in the case of *National Insurance Ltd. Vs. Pranay Sethi reported in (2017) 16 SCC 680*. Therefore, the learned counsel submitted that there were no merits in the appeal and the same deserved to be dismissed.

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

10.It is seen that the deceased was aged about 45 years at the time of accident and he was running chit fund, finance and real estate brokerage



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business. The income of the deceased was claimed at Rs.25,000/- per month. The Tribunal in the absence of any evidence assessed the income of the deceased at Rs.6,500/-. Taking into consideration of the facts of the case, the businesses carried on by the deceased and particularly the fact that the claimants spent Rs.9,39,900/- towards medical expenses of the deceased,

I am of the view that the income of the deceased could be fairly fixed at Rs.15,000/- per month. 25% of the income is added towards future prospects and the multiplier 14 appropriate to the age of the deceased is adopted. A deduction of 1/3rd is made towards the personal expenses of the deceased. The loss of income is assessed at Rs.21,00,000/- ($15000 \times 25/100 = 3750$; $15000 + 3750 = 18750$; $18750 \times 1/3 = 6250$; $18750 - 6250 = 12500$; $12500 \times 12 \times 14 = 2100000$)

11.The learned counsel for the third respondent pleaded that 10% had to be deducted towards contributory negligence of the deceased for not wearing the helmet. As the third respondent has not preferred any appeal, the said plea is rejected.



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Sl.No.	Heads	Award of the Tribunal	Award of this Court
1	Loss of Consortium (Rs.40,000/- each)	Rs. 1,00,000/-	Rs. 1,20,000/-
2	Funeral Expenditure	Rs. 25,000/-	Rs. 25,000/-
3	Transportation	Rs. 10,000/-	Rs. 10,000/-
4	Loss of love and affection	Rs. 2,00,000/-	NIL
5	Loss of Income	Rs. 7,28,000 /-	Rs.21,00,000 /-
6	Medical expenses	Rs. 9,39,900/-	Rs. 9,39,900/-
TOTAL		Rs.20,02,900/-	Rs.31,94,900/-

13.In the result, the claimants shall be entitled to Rs.31,94,900/- along with 7.5% interest. It is submitted by the learned counsel for the third respondent that the appeal has been filed with a delay of 836 days and the

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same was condoned on condition of forfeiture of interest for the delay period. In view of the said submission, there shall be a direction to the third respondent/Insurance Company to deposit a sum of Rs.31,94,900/- along with interest, less the interest for the delay period of 836 days and less the amount, if any already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made the major claimants shall be entitled to withdraw their respective share as per the apportionment made by the Claims Tribunal by making proper application before the Claims Tribunal. As far as the Minor's share is concerned the same shall be kept in cumulative deposit in a Nationalised Bank till the minor attains majority.

14. Accordingly, the appeal is partly allowed. There shall be no order as to costs.

12.06.2023

Index : yes/no
Internet : yes/no
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To

1. The Motor Accident Claims Tribunal

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Special Subordinate Judge,
Erode.

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

N.MALA, J.

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