



C.M.A. No. 2403 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2403 of 2021
and C.M.P. No. 13708 of 2021

The Chief Engineer,
(Agriculture Engineering Department)
Boohamoor,
Vridhachalam.

... Appellant / 1st Respondent
Vs.

1. Velmurugan
2. Thirumurugan ... 1 &2 Respondents / Petitioners
3. Selvaraj (Driver) ... 3rd Respondent / 2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 18.12.2019 passed in M.C.O.P. No.2211 of 2013 on the file of the Special Sub Judge, Motor Accident Claims Tribunal, Cuddalore (FAC).

For Appellant	:	Mr. P. Harish (Government Advocate - (CS))
For RR 1 & 2	:	Mr. B. Jawahar
For R3	:	Mr. P. Rajendran



JUDGMENT

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This Civil Miscellaneous appeal has been filed by the Chief Engineer, Agricultural Engineering Department challenging the quantum of compensation awarded in M.C.O.P. No.2211 of 2013, dated 18.12.2019 on the file of the Special Sub Judge, Motor Accident Claims Tribunal, Cuddalore (FAC).

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 23.07.2013, at about 18:30 hours, the deceased Chinnasamy was sitting on the Vettaikudi road bus stop, at that time the respondent's agricultural tractor bearing Registration No.TN-31-G-0732, driven by its driver in a rash and negligent manner, came from Vridhachalam to Vettaikudi Main road, hit against the deceased and caused grievous injuries. Thereafter, he succumbed to injuries in the Government Hospital, Virudhachalam. A criminal case was registered in Cr.No.166/2013 U/s.279, 337 of IPC on the file of S.H.O. Karuveppilaikurichy Police Station. For the loss of deceased Chinnasamy, the claimants who are the grandsons



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of the deceased has filed claim petition seeking compensation for a sum of Rs.20,00,000/- under section 166(1) of the Motor Vehicles Act.

4. The first respondent, the Chief Engineer of Agricultural Engineering Department filed a counter and contended that the accident was taken place only due to the negligence on the part of the deceased and disputed the age, income, occupation, nature of injuries and medical expenses of the deceased, hence prays to dismiss the claim petition.

5. The second respondent - driver of the said Agricultural Tractor filed a counter and stated that he has driven the tractor with due care and caution, the deceased along with two others have crossed the road suddenly and invited the accident and further disputed the age, income, occupation, nature of injuries and medical expenses of the deceased, hence prays to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimants, P.W.1 was examined and Exs.P.1 to P.11 were marked. On the side of the respondents, R.W.1 was examined and no exhibits were marked.



7. Based on the evidence placed on record, the Tribunal has held that the rash and negligence on the part of the second respondent - driver of the Agricultural Tractor is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.5,54,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization. In point no.3, the Tribunal has fixed the liability on the first respondent, being the owner of the Agricultural Tractor to pay compensation to the claimants.

8. Aggrieved over the award, the first respondent has filed this appeal challenging the quantum of compensation awarded by the Tribunal.

9. The learned counsel appearing for the appellant - Agricultural Department submits that at the time of filing of claim petition, the first claimant, who is the grandson of the deceased, was aged about 36 years and he has also admitted in his evidence that his grandfather was aged about 65 years, but while filing claim petition, the age of the deceased is mentioned as 55 years, the same was not been properly appreciated by the Tribunal, hence prays to modify the award, after fixing proper age of deceased.



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10. The learned counsel appearing for the claimant submits that since there is no record available to prove the age of the deceased, the Tribunal has taken into consideration of the age mentioned in the post mortem certificate of the deceased and accepted the same, hence prays to confirm the award of the Tribunal.

11. Heard the submissions made on both sides and perused the materials available on record:

12. Before the Tribunal, the respondents have taken a specific stand, disputing the age of the deceased and they have also relied on the Voter Id cards of the claimants and the admission made by the P.W.1 in his evidence. The claimants have not come forward with any documents to prove the age of the deceased, which was came into existence prior to FIR. The Ex.P.1 - FIR, the age of the deceased is mentioned as 55 years and the doctor, who has conducted the Post-mortem has recorded the same age in his Post-mortem certificate. The claimants have marked their Voter Id cards as Ex.P.9 and Ex.P.10, wherein the age of the first petitioner/ claimant is



mentioned as 19 years as on 01.01.1998 and the date of birth of the second petitioner/ claimant is mentioned as 17.07.1987.

13. In the oral evidence, it was elicited that both claimants were married and the deceased is their grand father, but they have not produced family card or any other documentary evidence to show that the deceased was residing with the claimants. In the evidence of P.W.1 - first claimant herein has mentioned that the age of his grand father would be around 64 years and the age mentioned as 55 years is wrong. It is also the case of the claimants that their mother is the daughter of the deceased herein and she was married at her age of 20 years in the year 1986. Even though, in the the post-mortem report, the age of the deceased is mentioned as 55 years, the documents, which were came prior to the registration of the case were not adduced. However, Ex.P.9 and P.10 - voter id cards of the claimants shows that the first claimant was aged about 34 years and the second claimant was aged about 26 years in the year 2013 and the age of their mother would be around 18 - 20 years at the time of her marriage and adding the age of the first claimant and his mother, the age of the deceased would be more than 60 years and this has not been properly appreciated by the Tribunal and the



Tribunal without any evidence has fixed the age of the deceased as 55 years as mentioned in the post-mortem certificate, hence this Court is of the view that the fixing the age of the deceased as 55 years is not proper and based on the above discussions, this Court accepts the case of the respondent that the age of the deceased is nearly 64 years and inclined to fix the same as the age of the deceased.

14. Considering the age of the deceased and the date of accident, the Tribunal has fixed the notional monthly income of the deceased as Rs.5,000/- and this Court finds the same is proper and hereby confirm the same. Since this Court has re-fixed the age of the deceased as 64 years, the multiplier adopted as per *Sarla Verma and others Vs. Delhi Transport Corporation and others* reported in [2009 ACJ 1298 SC : 2009 (6) SCC 121] case is modified to "7" and as per *National Insurance Co. Ltd., vs. Pranay Sethi and other* reported in [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680], considering the age of the deceased, future prospectus is not applicable, hence the quantum of compensation awarded under the head loss of dependency is re-worked as follows:

Monthly notional income = Rs.5,000/-



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Future Prospectus	= nil
Annual income (5,000 X 12)	= Rs.60,000/-
Deduction of one-third towards his personal expenses	= Rs.40,000/-
Mutliplier	= 7
Total Compensation (40,000/- X 7)	= Rs.2,80,000/-

15. The Tribunal has awarded Rs.40,000/- towards loss of consortium but as per the Hon'ble Apex Court in *Magma General Insurance Co. Ltd., vs Nanu Ram* reported in **2018 ACJ 2018**, all the claimants are entitled for consortium of Rs.40,000/- each. Hence, this Court is inclined to modify the loss of consortium to Rs.40,000/- to each of the grand sons of the deceased. Whereas the other heads are concerned, the Tribunal has awarded just compensation and this Court is inclined to confirm the same.

16. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	4,84,000/-	2,80,000/-	Reduced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Loss of consortium	40,000/-	80,000/-	Enhanced
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total Compensation	5,54,000/-	3,90,000/-	Reduced

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,54,000/- is hereby reduced to Rs.3,90,000/- [**Rupees Three Lakh and Ninety Thousands only**] together along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realization, excluding the default period, if any. The appellant/ first respondent is directed to deposit the amount awarded 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.2211 of 2013 on the file of the Special Sub Judge, Motor Accidents Claims Tribunal, Cuddalore (FAC). On such deposit, the claimants/ 1st and 2nd respondents herein are permitted to withdraw the award amount now determined by this Court along with interest and costs, as per the apportionment fixed by the



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Tribunal. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in the present appeal.

29.11.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Sub Judge,
Motor Accidents Claims Tribunal,
Cuddalore (FAC).
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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