



C.M.A.No.1523 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.06.2023

PRONOUNCED ON : 24.08.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.1523 of 2020

1.Muthulakshmi
2.Rajesh
3.Ragul
4.Sellam

... Appellants /Petitioners

vs.

1.S.Dinesh
2.M/s.Cholamandalam MS General
Insurance Co.Ltd., functioning at
No.191, Velachery Main Road,
Selaiyur, Tambaram East SO,
Kanchipuram-600 059.
3.K.Thilagavathi
4.M/s.United India Insurance Co.Ltd.,
functioning at No.5-B/11, State Bank of India,
Upstairs, Salem Main Road,
Rasipuram, Namakkal District-637 408. ...
Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 20.11.2019 passed in M.C.O.P.No.1390 of 2016 on the file of Motor Accident Claims Tribunal / Additional District Judge, Namakkal.

For Appellants : Mr.C.Thangaraju

For R1 : Unclaimed



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Exparte before Lower Court

For R2 : Mrs.R.Sreevidhya
For R3 : Served – No Appearance
For R4 : Mr.S.Arunkumar

JUDGMENT

Not being satisfied by the award passed in M.C.O.P.No.1390 of 2016 on the file of Motor Accident Claims Tribunal / Additional District Judge, Namakkal on 20.11.2019, the legal heirs of one Ravi S/o.Pachamuthu have preferred this Civil Miscellaneous Appeal for enhancement of compensation.

2. The claim petition was filed under Section 166 of Motor Vehicles Act claiming compensation of Rs.20,00,000/- for the death of Ravi in a road accident that occurred on 09.05.2016.

3. The learned Tribunal after hearing both sides and upon considering the oral and documentary evidence has granted compensation of Rs.9,41,200/-, fastening liability on the respondents 2 and 4 equally.

4. The learned counsel for the appellants Mr.C.Thangaraju would vehemently argue that while the deceased was riding his two wheeler



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bearing Reg.No.TN-28-J-6467 along the Rasipuram-Namakkal Road, the driver of the 1st respondent's vehicle Tata 407 tempo van bearing Reg.No.TN-45-AA-8854 came in a rash and negligent manner and hit on the motor cycle and the deceased fell down and was run over by a tipper lorry bearing Reg.No.TN-28-AV-0362 and the deceased succumbed to the injuries on the spot. The deceased was aged about 51 years and was a milk vendor earning Rs.20,000/- p.m. It is his further argument that the income fixed by the Tribunal is less. No future prospects was added while computing the income. No amount was awarded for loss of love and affection and prayed for enhancement of total compensation.

5. Contending contra, the learned counsel for the 2nd respondent Mrs.R.Sreevidhya, strenuously contended that in respect of deduction, only 1/3rd has to be deducted. She would concede for granting loss of consortium for an amount of Rs.1,20,000/- for the appellants 2 to 4 / Claimants.

6. The learned counsel appearing for the 4th respondent Mr.S.Arunkumar would argue that upon considering oral and documentary evidence, the award passed by the Tribunal is in order and needs no



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interference.

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7. Heard the arguments of the learned counsels for both sides and perused the entire materials available on record.

8. At trial, wife of the deceased Tmt.Muthulakshmi and the person who witnessed the accident have been examined as PW1 and PW2. One Mr.Selvakumar who was working as a Block Development Officer in Hatsun Agro Product Limited, was examined as PW3. Exs.P1 to P31 were marked. On the side of the respondents 2 and 4 / Insurance Company, the respective Deputy Managers have been examined as RW1 and RW2. Policy copy of the erred van has been marked as Ex.R1.

9. It is the evidence of ocular witness Mr.Dinesh kumar-PW2 that on 09.05.2016 at about 3.30 p.m., while the deceased Ravi was riding his motor cycle bearing Reg.No.TN-28-J-6467 along the Rasipuram-Namakkal Main Road at the point of Akkiyampatty burial ground, a car bearing Reg.No.TN-13-1119 came in a rash and negligent manner from the opposite direction, hit upon the motor cycle and he fell down and he was run over by a tipper lorry bearing Reg.No.TN-08-AV-0362 which came in a



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rash and negligent manner and the drivers of both the vehicles are liable for the accident and the negligence was fixed as 50:50 is not in dispute.

10. As per the driving licence/Ex.P9, age of the deceased was 51 years. It is the evidence of PW1 Tmt.Muthulakshmi, wife of the deceased that her husband was doing milk business and having 25 Cows and thereby he was earning Rs.1,00,000/- per month. Statement of accounts of the deceased were marked as Exs.P30 and P31. Through PW3, Mr.Selvakumar, the statement of accounts of the deceased was marked as Exs.P25 to P29. Considering the above said details, this Court deems fit to fix the monthly income of the deceased at Rs.14,000/-.

11. As per the law laid down by the Hon'ble Supreme Court in ***National Insurance Co. Ltd., v. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, for the age group of persons between 51 - 55, 10% is to be added as future prospects, while computing the monthly income. In ***Smt.Sarla Verma & Ors., v. Delhi Transport Corporation & Another*** reported in ***2009 (2) TN MAC 1 (SC)***, the Apex Court has standardized the details of deductions for personal and living expenses, if the deceased left behind four persons, then, the deduction should be 1/4th.



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The relevant multiplier as per the above said judgment is 11. Based on the above said details, for loss of dependency, the formula emerges as follows:

Age of the deceased : 51 years
Monthly income fixed : Rs.14,000/-
Future Prospects : 10%
Notional Income Arrived at : Rs.14,000/- + 10%
Rs.15,400/-
After deducting 1/4th for
Personal and Living Expenses: Rs.15,400/- - Rs.3,850/-
Rs.11,550/-
Multiplier to be adopted : 11
Loss of Dependency : Rs.11,550/- X 12 X 11
: Rs.15,24,600/-

12. As per the law laid down in ***National Insurance Co. Ltd., v. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, for loss of consortium in respect of two sons and mother of the deceased, an amount of Rs.1,20,000/- (Rs.40,000/- each) is granted. In all other aspects, the amount awarded by the Tribunal appears to be reasonable, therefore, needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:



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Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Loss of Income	Rs.8,71,200/-	Rs.15,24,600/-	Enhanced
2	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
3	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
4	Loss of consortium to the 1 st appellant	Rs. 40,000/-	Rs. 40,000/-	Confirmed
5	Loss of consortium to the appellants 2,3 and 4	NIL	Rs. 1,20,000/-	Granted
	Total	Rs.9,41,200/-	Rs.17,14,600/-	
	Rounded to		Rs.17,15,000/-	

13. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.9,41,200/-** to **Rs.17,15,000/-** which would carry interest at the rate of 7.5% per annum.

14. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.9,41,200/-** to **Rs.17,15,000/-**.



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(iii) Both the respondents 2 and 4 / Insurance Companies are directed to deposit **equally** the enhanced compensation amount i.e., **Rs.17,15,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation to the credit of M.C.O.P.No.1390 of 2016 on the file of Motor Accident Claims Tribunal / Additional District Judge, Namakkal, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the 1st appellant/wife is entitled to receive Rs.10,00,000/- and the 2nd and 3rd appellants are entitled to receive Rs.2,57,500/- each and the 4th appellant is entitled to receive Rs.2,00,000/-. The appellants/claimants are permitted to withdraw their shares along with interest and costs, less the amount if any already withdrawn, by making necessary cheque applications by the claimants before the Tribunal. The appellants/claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants.



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Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
Additional District Judge,
Namakkal.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

ssn

Pre-delivery Judgment in
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