



C.M.A.No. 1910 of 2022

s IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 27.06.2023

Coram:

THE HONOURABLE MRS. JUSTICE N. MALA

Civil Miscellaneous Appeal No. 1910 of 2022

- 1.Aruna
- 2.Minor Bindushree
- 3.Minor Bhavyashree
- 4.Srinivasa Reddy
- 5.Sampangamma

...Appellants

Versus

1. Vinay Kumar
2. The Manager
Shriram General Insurance Company Limited
E-8, RIICO Industrial Area
Sita Pura, Jaipur, Rajasthan – 302 022.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 28.02.2017 made in M.C.O.P.No. 209 of 2016 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellants : Mr. S.P. Yuaraj
For First Respondent : Ex-parte before the Tribunal
For Second Respondent : Mrs. R. Sreevidhya



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JUDGMENT

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The appeal is filed by the claimants seeking enhancement of compensation.

2. On 11.08.2015, while the deceased was proceeding in a motorcycle, a Tempo Van driven by its driver in a rash and negligent manner came in the opposite direction and hit the motorcycle of the deceased causing his death. The deceased was aged about 34 years at the time of accident, was working as a Manager in a Transport Office in Bangalore and was earning a sum of Rs.30,000/- per month. Therefore, the legal-heirs of the deceased being the wife, minor children and the parents filed a claim petition claiming a sum of Rs.70,00,000/- as compensation.

3. Before the Claims Tribunal, both the owner of the Tempo Van as well as the second respondent/Insurance Company remained exparte.

4. Before the Claims Tribunal, the first claimant examined herself as PW1 and two other witnesses were examined on their side. Ex.P1 to Ex.P9 were marked in support of the claim. On the side of the respondents,



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no oral or documentary evidence was adduced.

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5. The Claims Tribunal on an assessment of the entire evidence on record held that the negligence of the tempo van driver caused the accident. The Claims Tribunal, on the basis of the evidence on record, awarded a sum of Rs.19,50,000/- along with 7.5% interest as compensation and mulcted the liability on the second respondent/Insurance Company. Not satisfied with the Award of the Tribunal, the claimants have filed this Appeal seeking enhancement of compensation.

6. The learned counsel for the claimants submitted that the Tribunal erred in assessing the notional income at Rs.9,000/- per month. The learned counsel further submitted that the Tribunal erred in rejecting the salary certificate marked as Ex.P7. The learned counsel further submitted that as the deceased was maintainig a family of five members the tribunal ought to have assessed the notional income at Rs.12,000/- per month which would be reasonable income.

7. The learned counsel for the second respondent/Insurance



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Company, on the other hand, submitted that the assessment of notional income by the Tribunal was justified. The learned counsel further submitted that the Tribunal erred in awarding double compensation under the heads - loss of consortium and loss of love and affection. The learned counsel submitted that the claimants were entitled to Rs.15,000/- towards “loss of estate” instead of “loss of transport to hospital” and even under the head “funeral expenses” the tribunal ought to have awarded Rs.15,000/- instead of Rs.25,000/-.

8. I have heard both the learned counsels and I have perused the materials available on record.

9. On a perusal of the records, it is seen that the deceased was aged about 34 years at the time of accident and he was working as a Manager in a Transport Company in Bangalore. The deceased was earning Rs.30,000/- per month. Though the salary certificate of the deceased was marked as Ex.P7, in my view, the Tribunal has rightly rejected the same, as the salary certificate does not reveal the basic pay and other allowances and deductions in the salary. In the absence of any evidence in support of the income,



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considering that the deceased was 34 years old at the time of accident, was managing a family of five members, and also considering the cost escalation in the year 2015, I am of the view that the income of the deceased could be reasonably assessed at Rs.12,000/- per month. 40% of the income is added towards future prospects and 1/4 towards is deducted towards the personal expenses of the deceased.

10. The learned counsel for the second respondent/Insurance Company is justified in his submission that the tribunal erred in awarding double compensation under the head “loss of consortium” and “loss of love and affection” and that the award towards funeral expenses was also on the higher side. I am therefore of the view that the award towards loss of consortium of Rs.2,00,000/- at Rs.40,000/- to each of the claimants can be allowed and the award towards loss of love and affection at Rs.2,00,000/- be set aside. The award towards Transport expenses at Rs.5,000/- is converted to loss of estate and Rs.15,000/- is awarded.



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11. In view of the above discussion, the impugned award of the Tribunal is modified as under:-

<i>S.No</i>	<i>Various Heads</i>	<i>Awarded by the Tribunal</i>	<i>Awarded by this Court</i>
1.	Loss of Earnings	Rs.14,68,800	Rs.24,19,200
2.	Transport to Hospital	Rs.5,000	Rs.15,000
3.	Funeral Expenses	Rs.25,000	Rs.15,000
4.	Loss of Consortium	Rs.1,50,000	Rs.2,00,000
5.	Loss of Love and Affection	Rs.2,00,000	---
6.	Medical Expenses	Rs.1,08,240	---
	Total	Rs.19,57,040	Rs.27,57,440

12. The compensation awarded by the Tribunal is enhanced to Rs.27,57,440/- along with 7.5% interest. It is submitted by the learned counsel for the claimants that the entire award amount along with accrued interest and costs as awarded by the Tribunal was already deposited.

13. In the light of the above submissions, there shall be a direction to the second respondent/Insurance Company to deposit the balance enhanced amount of Rs.8,00,400/- along with interest at 7.5% from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this judgment. It is made clear that the claimants are not entitled to interest for the delay period of 1784 days. On



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such deposit being made, the claimants are entitled to withdraw the compensation as per the ratio fixed by the Claims Tribunal.

14. In view of the above discussion, the appeal is partly allowed.

There shall be no order as to costs.

27.06.2023

Speaking Order: Yes/No

Index: Yes/No

Neutral Citation: Yes/No

MSM

To

1. The Special District Court,
Motor Accidents Claims Tribunal, Krishnagiri.
2. The Section Officer, V.R.Section,
High Court, Madras.



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N. MALA, J.

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