



WEB COPY



C.M.A.No.1685 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.1685 of 2014

1. Geetha
 2. Minor P. Mayuranantham
 3. Minor P. Kalayarasu
[Minor claimants rep. by their mother/
P.Geetha, 1st appellant herein]
 4. Mallika
- ... Appellants/Claimants

Vs.

1. R. Saravana Kumar
 2. K. Velusamy
 3. The Cholamandalam M. S. General Insurance Co., Ltd.,
No.60-A, Mosuvarana Street,
EVN Road, Near LKM Hospital,
Erode – 638 009
[Policy No.3373/00339886/000/00]
- ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 28.01.2014 made in M.C.O.P.No.38 of 2012 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Erode.

For Appellants	:	Mr. K. Govi Ganesan
For R1 & R2	:	Ex-Parte
For R3	:	Mr. M. B. Raghavan



C.M.A.No.1685 of 2014

JUDGMENT

WEB COPY

The Civil Miscellaneous Appeal has been filed by the appellants against the award dated 28.01.2014, made in M.C.O.P.No.38 of 2012, on the file of the Motor Accidents Claims Tribunal, Special District Judge, Erode, for enhancement of compensation awarded.

2. The parties are referred to herein according to status and ranking before the trial Court.

3. The case of the claimants are as follows:

The claimants are the dependants of one Prakash. On 01.12.2011 at about 1.20 p.m., while the deceased Prakash was riding his two-wheeler bearing Registration No.TN 36 U 4978 on Erode-Kavindapadi Main Road, near Thabi Kalai Ayyan Koil Branch Road, at that time, the driver of a bus bearing Registration No.TN 33 AC 3471, drove the same in a rash and negligent manner and dashed against the two-wheeler, due to which, the deceased sustained multiple grievous injuries and immediately he was admitted into the Government Hospital, Erode, but he succumbed to the injuries in spite of better treatment. Hence, the legal heirs of the deceased



C.M.A.No.1685 of 2014

filed Claim Petition claiming compensation for a sum of Rs.25,00,000/- for the death of the deceased Prakash.

4. The first claimant is the wife of the deceased Prakash and the second and third petitioners are the sons and the fourth claimant is the mother of the deceased Prakash.

5. Before the Tribunal, the first and second respondent who are driver and owner of the offending vehicle remained ex-parte and has not contested the claim.

6. The third respondent-Insurance Company filed counter and contended that only due to the negligent act on the part of the deceased, the accident has occurred and that three persons were travelled in the two-wheeler at the time of accident, which resulted in the accident. The claimants have to prove the age, income, avocation and the legal heirs of the deceased. In any event, the quantum of compensation claimed by the claimants is highly excessive hence prayed to dismiss the claim petition.



C.M.A.No.1685 of 2014

WEB COPY

7. Before the Tribunal, on the side of the petitioners, P.W.1 to P.W.3 were examined and Exs.P1 to P12 were marked. On the side of the third respondent, R.W.1 and R.W.2 was examined and Exs.R1 and R2 were marked.

8. The Tribunal after considering the evidence placed on record, in Point No.1 has held that the deceased has contributed the accident and the driver of the bus negligently drove the same and apportioned the negligent on both of them as 25% : 75%. In Point No.2, the Tribunal has held that the third respondent is liable to pay compensation on behalf of the first and second respondents. In Point No.3, the Tribunal has awarded a sum of Rs.9,00,625/- as compensation to the claimants for the death of the deceased Prakash.

9. Not being satisfied with the amounts awarded by the Tribunal, the appellants have come with the present appeal seeking enhancement of compensation. The Transport Corporation has not filed any appeal against the award.



C.M.A.No.1685 of 2014

WEB COPY

10. The learned counsel for the appellant submitted that the Tribunal has not properly considered the quantum of compensation and also the notional income of the deceased has not been properly fixed. The Tribunal has granted compensation under various heads is as follows:

For loss of Estate a sum of Rs.10,000/-; For loss of Consortium a sum of Rs.15,000/-; For Funeral Expenses a sum of Rs.10,000/-; For Transportation a sum of Rs.5,000/- and for Loss of Dependency a sum of Rs.8,60,625/-. In all, a total sum of Rs.9,00,625/- awarded.

11. The learned counsel appearing for the Insurance Company has submitted that the Tribunal has rightly considered the evidence placed on record and awarded quantum of compensation and the notional income of the deceased fixed by the Tribunal is also on the higher side and the same ought not to be revised. In other heads also, the Tribunal has granted compensation on higher side and oppose to grant enhancement of compensation. Hence prays to dismiss the appeal filed by the claimants.

12. I have considered the rival submissions made on both sides and also perused the records available on record.



WEB COPY

13. Before this Court, the claimants have filed the appeal for enhancement of compensation on the ground that the future prospects has not been granted. This Court is of the view that as per the Judgment of the Hon'ble Apex Court in *National Insurance Company Ltd., vs. Pranay Sethi and others* [2017 (16) SCC 680], the claimants are entitled to award compensation of future prospects. The Tribunal by notionally fixed the income of the deceased as Rs.5,000/- per month needs to be revised since the deceased was aged about 30 years at the time of accident and was a Mason. By considering the year of the accident, fixing of Rs.6,000/- per month as monthly income of the deceased is proper. Accordingly, the notional income of the deceased is fixed as Rs.6,000/- per month. Similarly, as per the Judgment of the Hon'ble Apex Court in *National Insurance Company Ltd., vs. Pranay Sethi and others* case cited supra, 40% ought to have been added as future prospects. The deceased is aged about 30 years at the time of accident and considering the age of the deceased, the Tribunal has applied proper multiplier '17' as per the Judgment of the Hon'ble Supreme Court in *Sarla Verma and Others vs. Delhi Transport Corporation and Another* [2009 (2) TNMAC 1 SC : 2009 (6) SCC 121]. The claimants are four in



C.M.A.No.1685 of 2014

persons and hence deducted 1/4 for personal expenses and accordingly, the following calculations are made as follows: Loss of Income = [6000 + 2400 (40% of 6000) = 8400 – 2100 (1/4 deducted) = 6300 x 12 x '17'] = Rs.12,85,200/-. 75% of contributory negligence = Rs.9,63,900/- is granted under the head loss of income.

14. The Tribunal has awarded a sum of Rs.10,000/- for loss of estate and this Court finds the same is very meagre and accordingly, granted a sum of Rs.15,000/- under the head Loss of Estate. The Tribunal has awarded a sum of Rs.15,000/- for loss of consortium and this Court finds the same is to be revised and accordingly, granted a sum of Rs.40,000/- to the each claimants under the head loss of consortium and accordingly, arrived at Rs.1,60,000/- under the head loss of consortium. The Tribunal has awarded a sum of Rs.10,000/- for funeral expenses and this Court finds the same needs to be revised and accordingly, Rs.15,000/- is granted under the head for funeral expenses. The Tribunal has awarded a sum of Rs.5,000/- for transportation expenses, this Court finds the same is just and reasonable and the same is hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Estate	Rs.10,000/-	Rs.15,000/-	Enhanced
2.	Loss of Consortium	Rs.15,000/-	Rs.1,60,000/-	Enhanced
3.	Funeral Expenses	Rs.10,000/-	Rs.15,000	Enhanced
4	Transportation Charges	Rs.5,000/-	Rs.5,000/-	Confirmed
5	Loss of Income	Rs.8,60,625/-	Rs.9,63,900/-	Reduced
	Total Compensation	Rs.9,00,625/-	Rs.11,58,900/-	Enhanced by Rs.2,58,275/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.9,00,625/- is hereby enhanced to Rs.11,58,900/- [Rupees Eleven Lakhs Fifty Eight Thousand and Nine Hundred only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The third respondent/Insurance Company is directed to deposit the award amount, now determined 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.38 of 2012, on the file of the Motor Accidents Claims Tribunal, Special District Judge,



C.M.A.No.1685 of 2014

Erode. On such deposit, the appellants/claimants are entitled to withdraw the amount, now awarded by this Court along with interest and costs, as per the apportionment fixed by the Tribunal, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants without any formal application. The share of the minor claimants is directed to be deposited in any one of the Nationalized Bank till the minor claimants attains majority. On such deposit, the first claimant being the mother of the minor claimants is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimants. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

10.08.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special District Judge,
Motor Accidents Claims Tribunal,
Erode.
2. The Section Officer,
V.R.Section,



High Court,
Chennai.

WEB COPY



C.M.A.No.1685 of 2014

K.RAJASEKAR,J.

ssi

C.M.A.No.1685 of 2014

10.08.2023



WEB COPY



C.M.A.No.1685 of 2014