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C.M.A.Nos.1841 and 1843 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.1841 and 1843 of 2020

1. Muthayammal
2. K.C.Subramani
3. C.Somasundaram

... Appellants / Claimants
in C.M.A.No.1841 of 2020

Muthayammal

... Appellant / Claimant
in C.M.A.No.1843 of 2020

Vs.

1. M.Ajithkumar
2. The Manager,
National Insurance Company Limited,
78, Thiruvengadasamy Chetty Street,
Erode - 1.

3. N.Saravanan

... Respondents / Respondents
in both C.M.As

(Notice to R3 is given up)



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COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the contributory negligence fixed on the deceased and also to enhance the compensation amount awarded in the common judgment and decree dated 08.10.2020 made in M.C.O.P.Nos.257 and 258 of 2017 on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode.

For Appellants : Ms.M.Adhishri
in both C.M.As for Mr.N.Manokaran

For Respondents : Mr.S.Kaithamalai Kumar for R1
in both C.M.As Mr.J.Chandran for R2
R3 - given up

COMMON JUDGMENT

The appellants / claimants, not being satisfied with the quantum of compensation awarded by the Tribunal, have filed the appeals against the common award passed in M.C.O.P.Nos.257 and 258 of 2017, dated 08.10.2020.

2. The claimants are the wife and the sons of the deceased Chinnasamy. On 14.03.2017, the first claimant as a pillion rider travelled along with her deceased husband in a Hero Honda Pleasure Scooter bearing Registration No.TN-33-AP-8581. When the deceased stopped his vehicle



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near the Bank of Channel at Kavindichipalayam, at that time, the first respondent who came from Erode to Vellore main road by riding his Yamaha motorcycle bearing Registration No.TN-33-BL-5200 in a rash and negligent manner and dashed on the right side of the Hero Honda Pleasure Scooter. As a result of the accident, the deceased sustained grievous injuries and the first claimant also sustained grievous injuries on her head, face and all over the body. They were taken to the Hospital and the deceased died on the way to Hospital. Hence, the claim petition in M.C.O.P.No.258 of 2017 was filed by the wife of the deceased claiming compensation of Rs.12,00,000/- for the injury sustained by her.

3. Another claim petition in M.C.O.P.No.257 of 2017 was filed by the wife and the sons of the deceased claiming compensation for a sum of Rs.12,00,000/- for the death of the deceased.

4. The first respondent / owner-cum-driver of the offending



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vehicle filed common counter affidavit in both the claim petitions stating that the deceased was responsible for the accident and that the claim petitions were not maintainable on the ground that the owner of the vehicle driven by the deceased and the Insurance Company were not added as party to the petitions and therefore, the claim petitions suffer from non-joinder of necessary parties. That apart, the first respondent also challenged the claim petitions on the ground that the medical bills were not furnished with respect to the medical expenses incurred by the deceased as well as the injured first claimant and the compensation claimed was highly excessive.

5. The second respondent / Insurance Company filed a common counter affidavit stating that the compensation claimed by the claimants are very excessive and they also contended that since the FIR was filed as against the first respondent alone, it cannot be presumed that he alone was responsible for the accident and that there was an element of contributory negligence on the part of the deceased.

6. The Tribunal, on considering the facts and circumstances of the



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case and on appreciation of evidence, came to a conclusion that the deceased had also contributed to the accident and there was 50% negligence on his part. Having rendered such a finding, the Tribunal proceeded to determine the compensation and awarded total compensation of Rs.1,40,010/- in M.C.O.P.No.257 of 2017 filed by the wife and sons of the deceased and Rs.2,59,553/- in M.C.O.P.No.258 of 2017 filed by the wife, i.e., first claimant in the following manner:

<i>Sl.No.</i>	<i>Compensation awarded under the head in M.C.O.P.No.257 of 2017</i>	<i>Amount in (Rs.)</i>
1.	Loss of dependency	1,30,020/-
2.	Funeral expenses	15,000/-
3.	Loss of damages to clothes	15,000/-
4.	Parental Consortium	80,000/-
5.	Loss of consortium	40,000/-
	Total	2,80,020/-
	After deducting 50% towards negligence	1,40,010/-



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<i>Sl.No.</i>	<i>Compensation awarded under the head in M.C.O.P.No.258 of 2017</i>	<i>Amount (in Rs.)</i>
1.	Pain and sufferings	80,000/-
2.	Medical bills	3,04,106/-
3.	Loss of income (5,000 x 6 months)	30,000/-
4.	Disability 10%	50,000/-
5.	Attender charges	30,000/-
6.	Transportation	15,000/-
7.	Extra nourishment	10,000/-
	Total	5,19,106/-
	After deducting 50% towards negligence	2,59,553/-

The above compensation was directed to be paid with interest at 9% p.a. The claimants, not being satisfied with the compensation awarded by the Tribunal, have approached this Court seeking for enhancement of compensation, filed the present appeals.

7. Heard Ms.M.Adhishri, learned counsel for appellants / claimants, Mr.S.Kaithamalai Kumar, learned counsel for the first respondent and Mr.J.Chandran, learned counsel for the second respondent / Insurance Company.

8. This Court carefully considered the submissions made on either



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side and the materials available on record.

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9. This Court also carefully went through the award passed by the Tribunal.

10. With respect to C.M.A.No.1841 of 2020, the deceased was a pensioner receiving a pension of Rs.16,253/- per month. Since the deceased was aged about 71 years at the time of the accident, this Court cannot award any amount towards future prospects and therefore, the multiplier to be adopted is '5'. Even after the death of the deceased, the wife of the deceased is entitled for 50% of the pension amount. Therefore, the wife, i.e., first claimant is eligible for a sum of Rs.8,126/-. The deceased owned more than three acres of land and was earning a sum of Rs.31,000/- per month. However, there was no documentary evidence to prove the same, this Court fix a sum of Rs.6,000/- as monthly income of the deceased. After deducting 1/3rd towards personal expenses of the deceased, the loss of income to the family arrived at Rs.4,000/-. Adopting multiplier of 5 as fixed by the Apex



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Court in the case of ***Sarla Verma & Others vs. Delhi Transport Corporation & another*** reported in ***2009 (2) TNMAC 1 SC***, the loss of income is arrived at Rs.7,27,560/- (Rs.4,000/- + Rs.8,126/- x 12 x 5). Further, this Court finds that the compensation awarded by the Tribunal towards funeral expenses, parental consortium and loss of consortium are just and reasonable and does not require any interference.

11. Insofar as the compensation under the head loss of estate is concerned, though the Tribunal has not awarded any compensation under the said head, this Court is inclined to award a sum of Rs.15,000/-. Though the Tribunal had awarded a sum of Rs.15,000/- towards damages to clothes, this Court is not inclined to award any sum of amount towards the same since the victim died in the accident.

12. Insofar as the aspect of contributory negligence is concerned, this Court is of the view that the Tribunal has rightly fixed 50% contributory negligence on the part of the deceased and the same does not require the



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interference of this Court.

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13. In the light of the above discussion, this Court modifies the compensation in the following manner in M.C.O.P.No.257 of 2017 (C.M.A.No.1841 of 2020):

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1	Loss of dependency	1,30,020/-	7,27,560/-
2	Funeral expenses	15,000/-	15,000/-
3	Damages to clothes	15,000/-	-
4	Parental consortium	80,000/-	80,000/-
5	Loss of consortium	40,000/-	40,000/-
6	Loss of estate	-	15,000/-
	Total	2,80,020/-	8,77,560/-
	After deducting 50% towards negligence	1,40,010/-	4,38,780/-



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14. With respect to C.M.A.No.1843 of 2020 filed by the wife is concerned, this Court is of the view that the Tribunal has rightly awarded the compensation for the reasons that the injured wife was aged about 69 years at the time of the accident and was earning agricultural income by rearing cows and selling milk. However, there are no documents to substantiate the claim of the injured claimant. This Court in concurrence with the view taken by the Tribunal that the injured Muthayammal would not have been able to work for the next six months and accordingly, finds that a sum of Rs.5,000/- as fixed by the Tribunal towards loss of income is justified. The percentage of the disability was also fixed at 10% which also is rightly fixed by the Tribunal. The compensation awarded by the Tribunal towards other heads are also just and reasonable and hence, this Court does not find any reason to interfere with the award in respect to this appeal in M.C.O.P.No.258 of 2017 and accordingly, the same is confirmed.



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15. In the result, C.M.A.No.1841 of 2020 is allowed in part and the compensation awarded by the Tribunal in M.C.O.P.No.257 of 2017 at Rs.1,40,010/- is hereby enhanced to Rs.4,38,780/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.257 of 2017 on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode. On such deposit, the appellants / claimants are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn as apportioned by the Tribunal by making proper application before the Tribunal.

16. Insofar as C.M.A.No.1843 of 2020 is concerned, this Court is



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not inclined to interfere with the award passed by the Tribunal in M.C.O.P.No.258 of 2017 and accordingly, C.M.A.No.1843 of 2020 stands dismissed. No costs.

05.12.2023

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji



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To

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



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M.DHANDAPANI, J.

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