



C.M.A.No.3737 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3737 of 2019

1.Raja

2.Gandhimathi

... Appellants

Vs.

1.Venkatesan

2.The ICICI Lombard General Insurance Co. Ltd.,
No.142, 1st Floor,
ECR Main Road,
Pondicherry.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the above civil miscellaneous appeal and set aside the judgment and decree dated 06.04.2018 made in M.C.O.P. No.349 of 2015 on the file of the Motor Accidents Claims Tribunal, Poonamallee, the II - Additional District Court at Poonamallee.

For Appellants : M/s.Djearany G.

For Respondents : R1 – NA (Unclaimed)

M/s.K.Poomalai for R2

J U D G M E N T



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This appeal has been filed against the judgment and decree dated 06.04.2018 passed by the Motor Accidents Claims Tribunal, Poonamallee, the II - Additional District Court at Poonamallee, in M.C.O.P.No.349 of 2015.

2.The learned counsel appearing for the appellants submitted that on 25.06.2015 at about 07.45 hours, the deceased R.Dakshinamoorthy was walking from East to West on Poonamallee to Avadi Main Road near Paruthipattu, Ayyankulam in front of My Shop. At that time, the TATA Maxi Cab Van bearing Registration No.TN-18-J-5302, owned by the first respondent and insured with the second respondent, came in a rash and negligent manner, from North to South and hit the deceased, due to which, the deceased lost his life.

3.The learned counsel appearing for the appellants further submitted that thereafter, the brother and sister of the deceased C.Duraisamy / appellants filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.10 Lakhs. However, the Tribunal awarded only a sum of Rs.70,000/- as compensation to the claimants. The learned counsel further submitted that the amount awarded by the Tribunal is very meagre.



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4.The learned counsel appearing for the appellants further submitted that the claimants are brother and sister of the deceased and they are dependents of the deceased and they are entitled to claim compensation and further submitted that the Tribunal has not awarded any amount for loss of income and hence, the appellants/claimants are entitled for enhancement of compensation.

5.The learned counsel appearing for the second respondent Insurance Company submitted that the Tribunal after considering all the factual aspects, awarded the compensation which is just and reasonable and hence, the impugned judgment warrants no interference.

6.Heard the learned counsel appearing for the appellants claimants as well as the learned counsel appearing for the second respondent Insurance Company and perused the materials available on record.

7.The accident and the manner in which the accident happened



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are not disputed. This appeal has been filed only questioning the quantum of compensation.

8.The tribunal after elaborately discussing the factual aspects awarded a sum of Rs.15,000/- for funeral expenses, Rs.40,000/- for loss of consortium, Rs.15,000/- for loss of estate and arrived at a total compensation of Rs.70,000/- with interest at the rate of 7.5%p.a. from the date of petition i.e., 07.09.2015 till the date of realization and proportionate costs.

9.The claimants are brother and sister of the deceased and Ex.P8 – copy of the Ration Card reveals that they are living separately. Hence, they are not entitled to any amount towards loss of income, however, they are entitled to compensation under other heads. Since the claimants are brother and sister of the deceased, the amount awarded by the Tribunal for loss of consortium is deleted. Instead this Court awards a sum of Rs.80,000/- (Rs.40,000/- each) for loss of love and affection. The amount awarded under the other heads, in the opinion of this Court are just and reasonable and the



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same are confirmed.

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10. Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
2.	Loss of estate	Rs.15,000/-	Rs.15,000/-
3.	Loss of consortium	Rs.40,000/-	---
4.	Loss of love and affection	---	Rs.80,000/-
	Total	Rs.70,000/-	Rs.1,10,000/-

11. The appellants claimants are entitled to total compensation of Rs.1,10,000/- along with interest at the rate of 7.5% p.a. from the date of petition i.e., 07.09.2015 till the date of realization.

12. The civil miscellaneous appeal is partly allowed. The judgment and decree passed in M.C.O.P.No.349 of 2015 dated 06.04.2018 by the Motor Accidents Claims Tribunal, Poonamallee, the II - Additional District Court at Poonamallee, is modified to the above extent.

13. The second respondent Insurance Company is directed to deposit the modified/ enhanced award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this



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judgment, less the amount if any, already deposited. On such deposit being made, the appellants/ claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The appellants/ claimants shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellants/ claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accidents Claims Tribunal, Poonamallee, the II - Additional District Court at Poonamallee, shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellants/ claimants.

14.The civil miscellaneous appeal is partly allowed. No costs.

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

To

1.The Motor Accidents Claims Tribunal,
Poonamallee, the II - Additional District Court at Poonamallee.

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M.DHANDAPANI,J.
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