



C.M.A. No. 3657 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3657 of 2021

1. Velavankumar
2. Shivakumar ... Appellants / Petitioners

Vs.

1. Ganeshamoorthy
2. Cauvery
3. The New India Assurance Co. Ltd.,
Chidambaram, Rep. by its Branch Manager,
No.78, 1st Floor, East Car Street,
Dhanvanthri Building,
Chidambaram Town and
Distrit Munsif. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 24.09.2019 made in M.A.C.T.O.P. No. 202 of 2016 on the file of the District Judge, Motor Accident Claims Tribunal, Karaikal.

For Appellants : Mr. K. Varadha Kamaraj
For RR 1 & 2 : Mr. T. Gopinath
For R3 : Mr. C. Ramesh Babu



WEB COPY



C.M.A. No. 3657 of 2021

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation awarded in M.A.C.T.O.P. No. 202 of 2016, dated 24.09.2019 on the file of the District Judge, Motor Accident Claims Tribunal, Karaikal, wherein the Tribunal has awarded compensation for a sum of Rs.12,55,900/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. On 19.04.2015, at about 17:00 hours, the deceased Ramamoorthy was riding a motorcycle bearing Registration No.PY-02-B-4879 on Thalachangadu main road, while he reached near Munisamy's house, an Hyundai i-10 car bearing Registration No.TN-01-AQ-6658, driven by its driver in a rash and negligent manner came in the same direction and hit on the motorcycle, thereby caused grievous injuries on his head. After first aid at General Hospital, Sirkali, he was admitted to Meenakshi Mission



Hospital, Tanjore, where he undergone major surgery, subsequently, after regular treatments, Ramamoorthy died on 09.08.2015 due to grievous head injury sustained by him during the accident. A criminal case was registered in Cr.No.123/2015 U/s.279, 337 subsequently, altered to section 304(A) of I.P.C. on the file of Sembanarkoil Police Station. For the loss of deceased, the claimants, who are the sons of the deceased has filed claim petition seeking compensation for a sum of Rs.24,00,000/- under section 166 of the Motor Vehicles Act, 1988.

4. The first, second and third respondents are the driver, owner and insurer of the Hyundai i-10 car bearing Registration No.TN-01-AQ-6658, respectively. The first and second respondents have filed a counter and contended that the deceased has sustained only minor injuries and the death was not occurred due to the injuries sustained in the accident. They also contended that the deceased was not having a valid driving licence at the time of accident and stated that the accident was taken place only due to the rash and negligence on the part of the deceased. They have further stated that the first respondent possessed a valid driving licence and the said car was insured with the third respondent at the time of accident, hence the



third respondent – insurance company is liable to pay any compensation to the claimants, prays to dismiss the claim petition.

5. The third respondent – insurance company has filed a counter and contended that the deceased was aged about 75 years and has no valid driving licence at the time of accident and also stated that the accident was taken place only due to the negligence on the part of the deceased, who did not notice the vehicle that was coming behind him, suddenly slowed down his motorcycle without showing any sign and without caring about the vehicles that were coming behind him and invited the accident. The insurance company also disputed the occupation, dependency and earning of the deceased as claimed by the claimants, hence prays to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P.1 to P.18 were marked. On the side of the respondents, no witnesses were examined and no exhibits were marked.

7. Based on the evidence placed on record, the Tribunal in point



C.M.A. No. 3657 of 2021

no.1, has held that the rash and negligence on the part of the driver of the Hyundai i-10 car bearing Registration No.TN-01-AQ-6658 is responsible for the accident. In point no.2, the Tribunal has fixed the liability on the part of the third respondent – insurance company to indemnify the second respondent and to pay compensation to the claimants. In point no.3, the Tribunal has quantified and granted compensation for a sum of Rs.12,55,900/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

8. Aggrieved over the award, the claimants have filed this appeal seeking enhancement of compensation. The respondents have not challenged the award of the Tribunal.

9. The learned counsel appearing for the claimants submitted that the Tribunal has not properly fixed the notional income of the deceased and failed to grant 'Just compensation' and prays to enhance the compensation.

10. Per contra, the learned counsel appearing for the insurance company submitted that the Tribunal based on the evidence placed on record



has rightly fixed the notional income of the deceased. He also stated that there was no post-mortem conducted to prove that the death of the deceased, the Tribunal has awarded compensation by treating the claim petition as fatal case and same is not sustainable and prays to dismiss the appeal.

11. Heard the submissions made on both sides and perused the materials placed on record:

12. In this case, even though the deceased was not died immediately after the accident, the Tribunal by considering the date of accident, date of death and nature of injuries sustained by the deceased, more particularly, head injuries sustained, held that the deceased was died only due to the grievous head injury sustained in the accident. It states that mere non performance of post-mortem is not the ground to reject the claim. The P.W.1 in his evidence has stated that, after first Aid, deceased was admitted at Meenakshi Hospital, Tanjore for 20.04.2015 to 10.06.2015. He was died on 09.08.2015 i.e., two months after discharge from the Hospital. The nature of injuries sustained by the deceased is head injury and surgery was also conducted on 01.06.2015. Discharge summary shows that,



deceased after sustaining head injury, he was not able to recover well due to his age. Prior to accident, he was hale and healthy. The evidence of P.W.1 is supported by the medical records Ex.P.8 and P.10 – Discharge summaries. Since, the deceased was died within two months from the date of discharge from hospital and injuries were not healed due to old age, the evidence of claimants is sufficient to prove the fact that the deceased was died due to the head injury sustained in accident. Hence, the absence of Post-mortem is not a ground to reject the claim petition.

13. Exs.P.15 to P.18, are the Medical Practitioner certificates of the deceased and based on the same, the notional income of the deceased was fixed as Rs.15,000/- per month by the Tribunal. Even though, the claimants have able to prove that the deceased was a Medical Practitioner, they have not produced any documentary evidence to show the income of the deceased. Considering the year of accident, age and profession of the deceased, this Court is of the view that the notional income fixed by the Tribunal requires re-consideration and the same is hereby modified to Rs.18,000/- per month.



14. The Tribunal has rightly followed the dictum as laid down in

Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121], multiplier is fixed as '5' by considering the age of the deceased at the time of the accident. After deducting one-third (1/3) of his monthly income towards his personal and living expenses, the compensation under loss of dependency with modified monthly notional income of Rs.18,000/- is assessed as follows:

Annual income (Rs.18,000/- x 12)	= Rs.2,16,000/-
Yearly contribution to his family (deduction of 1/3)	= Rs.1,44,000/-
Applicable Multiplier	= 5
Total compensation (Rs.1,44,000 x 5)	= Rs.7,20,000/-

15. The Tribunal has not awarded compensation under the head consortium, as per the Hon'ble Apex Court in **United India Insurance Co. Limited v. Satinder Kaur and Ors.** [MANU/SC/0500/2020 : (2021) 11 SCC 780] and **Magma General Insurance Co. Ltd., vs Nanu Ram** reported in **2018 ACJ 2018**, all the claimants are entitled for consortium. In this case, the claimants are the sons of the deceased, hence, this Court is inclined to grant the Rs.40,000/- to each of the claimants. Whereas the other heads are concerned, the compensation awarded by the Tribunal are just and the same



C.M.A. No. 3657 of 2021

are hereby confirmed.

WEB COPY

16. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	6,00,000/-	7,20,000/-	Enhanced
2.	Medical Expenses	6,10,000/-	6,10,000/-	Confirmed
3.	Attender Charges	15,900/-	15,900/-	Confirmed
4.	Loss of Estate	15,000/-	15,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
6.	Loss of consortium	---	80,000/-	Granted
	Total Compensation	12,55,900/-	14,55,900/-	Enhanced

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,55,900/- is hereby enhanced to **Rs.14,55,900/- [Rupees Fourteen Lakh Fifty Five Thousand and Nine Hundred only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The third respondent - Insurance Company is directed to deposit the amount awarded by this Court along



C.M.A. No. 3657 of 2021

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.A.C.T.O.P.No.202 of 2016 on the file of the District Judge, Motor Accidents Claims Tribunal, Karaikal. 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 per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

15.12.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The District Judge,
Motor Accident Claims Tribunal,
Karaikal.



C.M.A. No. 3657 of 2021

2. The Section Officer,
V.R.Section,
High Court, Chennai.

K. RAJASEKAR, J.

stn

C.M.A. No. 3657 of 2021

15.12.2023