



C.M.A. No. 306 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 306 of 2021

1. Ameena Bee
2. Syed Farzee Ahamed
3. Nasrin Begum
4. Syed Mohammed Usman ... Appellants / Petitioners

Vs.

1. Perumal
2. Reliance General Insurance Company Limited,
Reliance House,
No.6, VI Floor,
Haddows Road, Nungambakkam,
Chennai - 600 001. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 16.12.2019 passed in M.A.C.T.O.P. No. 4929 of 2016 on the file of the II Judge, Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellants : M/s. M. Malar

For R1 : Ex-parte

For R2 : M/s. S. Arunkumar



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JUDGMENT

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This Civil Miscellaneous Appeal is filed by the appellants/ claimants seeking enhancement of compensation against the Judgment and decree dated 26.11.2012 passed in M.A.C.T.O.P. No. 4929 of 2016 on the file of the II Judge, Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, wherein the Tribunal has awarded compensation for a sum of Rs.11,06,000/- along with the interest @ 7.5% per annum from the date 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 11.06.2016 at about 19:20 hours, the deceased namely Syed Ismail was riding a two wheeler bearing Registration No.TN-85-5873 near Ayyappan Koil, Pudunallur check post, Chennai, dashed on the lorry bearing Registration No. TN-20-AL-6244 , which was parked in the middle of the road without any parking lights and indication, in negligent manner, which resulted in causing grievous injuries and on the next day 12.06.2016,



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he died at RGGG Hospital, Chennai. A criminal case was also registered in Cr.No.202/2016 on the file of Somangalam Police Station, Kancheepuram.

According to the claimants, the deceased is a shoe maker and also carried out real estate business, thereby earning Rs.20,000/- per month. The claimants, who are wife and children of the deceased have filed petition seeking compensation for a sum of Rs.65,00,000/- invoking Section 166 of the Motor Vehicles Act, 1988.

4. The first respondent is the owner and the second respondent is the insurer of the offending lorry bearing Registration No. TN-20-AL-6244. Before the Tribunal, the first respondent has not contested the claim and remained ex-parte. The second respondent - insurance company has filed a counter and contended that the rider of the two wheeler has driven the vehicle negligently in high speed and dashed against the parked lorry, which resulted in accident. Further contended that the claimants shall prove the income, age, avocation of the deceased and dependency of the claimants.

5. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P.1 to P.14 were marked. On the side of the



respondents neither witness nor documents were marked.

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6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the lorry bearing Registration No. TN-20-AL-6244 was parked on the middle of the road in negligent manner, which invited the accident. In point no.3, the Tribunal has quantified and granted a total compensation for a sum of Rs.11,06,000/- along with the interest @ 7.5% per annum from the date of numbering of the petition till the date of realization. In point no.4, the Tribunal has fixed the liability on the second respondent - insurance company to indemnify the first respondent and to pay the compensation awarded to the claimants.

7. Aggrieved over the quantum of compensation, the claimants have come forward with this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimants has submitted that the Tribunal has not properly appreciated the evidence placed on record to fix the income of the deceased and the age of the deceased is also not properly fixed. Even though, there is an evidence placed on record to prove the age of the deceased. The Tribunal has wrongly fixed the age of the



deceased as 60 years, hence prays to modify the award.

WEB COPY 9. The learned counsel appearing for the insurance company stated that the Tribunal after considering the evidence placed on record, has fixed the quantum of compensation. The insurance company has also taken steps to prefer a separate appeal challenging both negligent act on the part of the driver of the first respondent as well as the quantum of compensation awarded and the same is yet to be numbered and hence, prays to dismiss the appeal.

10. Heard the submissions made on both sides and perused the materials available on record:

11. Before the Tribunal, the respondent - insurance company has not adduced any evidence to contradict the negligence alleged against the driver of the first respondent vehicle. The P.W.1, who is the wife of the deceased has deposed that her husband was riding the two wheeler on 11.06.2016 at about 19:20 hours, while he reached near Ayyappan Koil, Pudunallur check post, Chennai, he dashed on the parked lorry. According to her, the lorry was parked in the middle of the road and to support her



evidence, the Ex.P.1 - F.I.R. is relied on and the Tribunal has held that the lorry was parked negligently in the middle of the road without any indication to the on-coming vehicles in the road. Since there was no contra evidence, this Court finds no infirmity in the finding of the Tribunal.

12. With regard to age of the deceased, the Tribunal has relied upon the death certificate issued by the appropriate authority to determine the age of the deceased. The contention of the claimants is that in the post-mortem certificate, the age of the deceased is recorded as 55 years and the Tribunal ought to have taken the post-mortem certificate for fixing the age of the deceased. On perusal of the evidence placed on record, it shows that all the claimants are having their aadhaar cards, which is marked in Ex.P.6 to P.9. Similarly, they also have bank passbook but they have not come forward to mark any documents to prove the age of the deceased. The age marked in the post-mortem certificate is based on the F.I.R., which was lodged without any proof of age, whereas the death certificate issued by the appropriate authority after due enquiry and same is recorded based on the requisition of legal heirs of the deceased. The Tribunal has rightly considered the death certificate as a valid document and fixed the age as 60



years and this Court finds no infirmity in that finding of the Tribunal.

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13. With regard to the income and avocation of the deceased, the claimants have not produced any evidence, the Tribunal after considering the year of the accident and age of the deceased has rightly fixed the income as Rs.10,000/- per month. The Tribunal by following the dictum as laid down in *National Insurance Co. Ltd., vs. Pranay Sethi case* reported in **2017(2) TN MAC 609 (SC)** has fixed 10% as future prospectus and as per *Sarla Verma and others Vs. Delhi Transport Corporation and another* reported in **2009 ACJ 1298 SC : 2009 (6) SCC 121**, the multiplier is fixed as '9'. After deducting 1/4 of his total income towards the personal expenses of the claimant, compensation is quantified as Rs.8,91,000/- under the head loss of income. This Court also finds no infirmity in it and confirms the same.

14. The Tribunal has awarded Rs.75,000/- towards loss of love and affection to the claimants and also Rs. 40,000/- towards loss of spouse consortium and Rs. 75,000/- towards parental consortium, but 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 only for consortium. Hence, this Court is inclined to grant the Rs.40,000/- each to the claimants, who are the wife and children of the deceased Syed Ismail under the head spouse consortium and parental consortium, respectively as per the Apex Court Judgment stated supra. The Tribunal has not awarded loss of estate and this Court is inclined to award Rs.15,000/- under loss of estate to the claimants. Whereas, the compensation awarded by the Tribunal under other heads are just and the same are hereby confirmed.

15. 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	8,91,000/-	8,91,000/-	Confirmed
2.	Loss of Consortium (Spouse consortium)	40,000/-	40,000/-	Confirmed
3.	Loss of Love and Affection	75,000/-	---	Rejected
4.	Parental consortium	75,000/-	1,20,000/-	Enhanced
5.	Medical expenses	10,000/-	10,000/-	Confirmed
6.	Funeral expenses	15,000/-	15,000/-	Confirmed
7.	Loss of estate	---	15,000/-	Granted



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
	Compensation Awarded	11,06,000/-	10,91,000/-	Reduced

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,06,000/- is hereby reduced to **Rs.10,91,000/- [Rupees Ten Lakhs and Ninety One Thousands 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 realization of compensation amount, excluding the default period if any. The second respondent - insurance company is directed to deposit the amount awarded 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.A.C.T.O.P. No.4929 of 2016 on the file of the II Judge, Motor Accidents Claims Tribunal, II Court of Small Causes Court, Chennai. On such deposit, the claimants/ appellants herein are permitted to withdraw the award amount now determined by this Court along with interest and costs, as per the apportionment fixed by the



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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.

04.10.2023

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The II Judge,
Motor Accident Claims Tribunal Court,
II Court of Small Causes, Chennai.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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