



C.M.A.No.1497 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1497 of 2017

1. Deepa
2. Minor M.Parameswari
3. Minor M.Subasri ... Appellants / Petitioners

Vs.

1. Ajith
2. T.Saleem
3. United India Insurance Company Limited,
P.B.No.34, C.G.Complex,
No.139, Kumaran Road,
Tiruppur - 641 601. ... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.02.2015 made in M.C.O.P.No.428 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Erode.



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For Appellant : Mr. C.Munusamy
For Respondents : R1 - Ex-parte
Not ready notice for R2
Ms.I.Malar for R3

J U D G M E N T

Not being satisfied with the quantum of compensation awarded by the Tribunal in M.C.O.P.No.428 of 2013 filed by the claimants, the appellants have come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. On 20.01.2013, when the first petitioner's husband was riding TVS Victor motorcycle bearing Registration No.TN-33-Q-9801 from west to east at Ellapalayam road in Erode, at that time, a Super Splendor bike bearing Registration No.N-28-P-7803 driven by the first respondent in a rash and negligent manner came from the opposite direction, dashed against the first petitioner's husband in which the petitioner's husband suffered injuries for which he was admitted in the hospital and due to the head injuries, he died on 23.01.2013. Claiming compensation in a sum of



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Rs.12,00,000/- on the ground that, the deceased was the sole bread winner of the family and he was earning a sum of Rs.20,000/-per month, the claim petition was filed by the claimants, who are the wife and the daughters of the deceased. The said claim was resisted by the third respondent / Insurance Company. The first respondent is the driver and the second respondent is the owner of the Splendor bike.

3. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P1 to P14 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Exs.R1 to R6 were marked. The Tribunal, after analysing the oral and documentary evidence available on record, awarded a sum of Rs.9,08,370/- as compensation and directed the third respondent / Insurance Company to pay and recover the same from the owner of the Splendor bike, i.e., second respondent.

4. The learned counsel appearing for the appellants / claimants submitted that the deceased was doing milk and coconut vending business



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and was earning a sum of Rs.20,000/- per month. Even for the accident took place in the year 2008, the Hon'ble Supreme Court in the case of ***Syed Sadiq & Ors. Vs. The Divisional Manager, United India Insurance Co. Ltd*** reported in ***2014 (2) SCC 735*** awarded a sum of Rs.6,500/- for the vegetable vendor. However, the Tribunal fixed meagre sum of Rs.4,500/- per month as notional income of the deceased and granted only a sum of Rs.8,64,000/- towards loss income. The Tribunal had erred in awarding lesser sum towards loss of consortium. Further, the Tribunal has not awarded any amount towards loss of love and affection for the daughters. Though the Tribunal discussed in detail about the medical expenses, has failed to award any amount there towards. Hence, he prayed for enhancement of compensation.

5. The first respondent remained *ex-parte* before the Tribunal.

6. Per contra, the learned counsel appearing for the third respondent / Insurance Company contended that the appellants have not



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produced any material evidence to prove that the deceased was earning a sum of Rs.20,000/- per month. In the absence of any material evidence to prove the avocation and income of the deceased, a sum of Rs.4,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. He further submitted that since the deceased has no valid driving license to drive TVS Victor motorcycle at the time of the accident, the insured and the insurer of the TVS Victor motorcycle bearing Registration No.TN-33-Q-9801 were not impleaded as parties to this proceedings and hence, the claim petition is bad for non-joinder of necessary parties. He further submitted that the first respondent was also not having valid and effective driving license at the time of the accident and there is no valid insurance policy for the vehicle bearing Registration No.TN-28-P-7803 and hence, the Tribunal has right in ordering pay and recovery, which need not be interfered with. The amounts awarded by the Tribunal under other heads are not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.



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7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. The factum of the accident and the negligence is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the claimants is with regard to the quantum of compensation awarded under the head loss of income.

9. The Tribunal, in the absence of any proof regarding monthly income of Rs.20,000/-, determined the monthly income at Rs.4,500/- and added 50% towards future prospects, which is just and proper. The Tribunal rightly adopted multiplier '16' since the age of the deceased was proved by Ex.P8 - Death Certificate and deducted $\frac{1}{3}^{\text{rd}}$ towards personal expenses of the deceased. In view of the above, the compensation was awarded by the Tribunal towards loss of income at Rs.8,64,000/- [Rs.4,500 X 12 X 16]. The Tribunal awarded only a sum of Rs.10,000/- as consortium to the first



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appellant and the same is enhanced to Rs.40,000/- as per the judgment of the Hon'ble Supreme Court in *National Insurance Co. Ltd. – Vs – Pranay Sethi & Ors.* reported in **2017 (16) SCC 680**. The Tribunal has not awarded any amount towards loss of love and affection to the appellants 2 and 3 and hence, a sum of Rs.40,000/- each is awarded towards loss of love and affection. Since the Tribunal has wrongly awarded the medical expenses incurred at Rs.19,370/-, which was proved by Ex.P10 - medical bill, under the head loss of estate, the same is modified. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate.

10. In view of the above discussion and also taking note of the receipt of ambulance charges for a sum of Rs.5,211/-, this Court considers it appropriate to award a sum of Rs.24,581/- (Rs.5,211/- + Rs.19,370/-) towards medical bills. The compensation awarded by the Tribunal towards other heads is just and reasonable and hence, the same is confirmed.



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11. Insofar as the contention of the learned counsel for the third respondent / Insurance Company regarding 'pay and recovery' ordered by the Tribunal is concerned, the Hon'ble Supreme Court in ***National Insurance Co. Ltd., vs. Swaran Singh*** reported in ***(2004) 3 SCC 297***, has held that where the driver did not have the valid driving licence and there are breach of policy conditions, 'pay and recover', can be ordered in case of third-party risks. In such circumstances, since the driver of the Splendor bike, i.e., first respondent was not having valid and effective driving license at the time of the accident and there was also no valid insurance policy for the vehicle bearing Registration No.TN-28-P-7803, I find no error in the order passed by the Tribunal directing 'pay and recover'.

12. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads is modified as under:



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<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 Income	8,64,000/-	8,64,000/-
2	Loss of Consortium	10,000/-	40,000/-
3	Loss of Love and Affection (2 X Rs.40,000/-)	-	80,000/-
4	Loss of Funeral Expenses	10,000/-	10,000/-
5	Loss of Estate	19,370/-	15,000/-
6	Transportation	5,000/-	5,000/-
7	Medical Bills	-	24,581/-
	Total	9,08,370/-	Rs.10,38,581/-

13. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.9,08,370/- is hereby enhanced to Rs.10,38,581/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The third 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



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date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.428 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Erode at the first instance and then recover the same from the second respondent as ordered by the Tribunal. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the major claimant, i.e., first claimant through RTGS as per apportionment ordered by the Tribunal.

14. Insofar as the claimants 2 and 3, viz., the minor daughters of the deceased is concerned, if the said claimants are yet to attain majority, the Tribunal is directed to keep their share in deposit in an interest yielding fixed deposit with any one of the Nationalised Banks, initially for a period of three years to be renewed at periodic intervals until the minors attain majority and interest derived from out of the said share of the minors shall be paid to the first claimant / mother every quarter to be utilised for the welfare of the said minors. Upon attaining majority and upon proper proof being filed substantiating attainment of majority, the Tribunal is directed to



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transfer the share of the claimants 2 and 3 directly to the Bank account of the claimants 2 and 3 through RTGS. No costs.

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

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To

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



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