



C.M.A.No.1537 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 07.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

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1.Tamilselvi

2.R.Rohit (Minor)

Rep. by his mother and next friend
the 1st petitioner herein

3.S.M.Palani

4.Rani

5.P.Selvi

...Appellants / Petitioners

Vs.

1.Dhasaradan

2.Oriental Insurance Company Limited,
No.216, O.No.115, II Floor,
Chennai – 600 108.
Respondents

...Respondents /

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.09.2007 passed in M.C.O.P.No.2643/2006 on the file of the Learned Motor Accident Claims Tribunal cum Chief Judge, Small Causes Court, Chennai and



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enhance the award amount.

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For Appellants : Mr.S.Ravikumar

For Respondent 1 : Exparte in the Lower Court itself.

For Respondent 2 : Mr.P.Kandasamy

J U D G M E N T

This Civil Miscellaneous Appeal No.1670 of 2017 has been filed to enhance the compensation amount awarded in the judgment and decree dated 26.09.2007 made in M.C.O.P.No.2643/2006 on the file of the Learned Motor Accident Claims Tribunal cum Chief Judge, Small Causes Court, Chennai with interest and cost by allowing this Civil Miscellaneous Appeal.

2. The facts of the case in a nutshell:

The deceased namely P.Ramesh was working as an accountant in M/s. Yes Vee Engineering, Chennai and was earning Rs.4500/- per month as salary. On 13.09.2005 at about 19.00 hours, when the deceased was riding his motor cycle bearing registration No.TN-07-AZ-8626 at 200 feet By pass road near Thiruneermalai in Tambaram to Maduravoyal road, the driver of the tipper lorry bearing Registration No.TN-02-4905 drove the



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same in a rash and negligent manner in the very same direction at a high speed and dashed against the motor cycle, due to which the motor cyclist was thrown out and sustained fatal injuries. The accident occurred solely due to the rash and negligent driving of the driver of the tipper lorry and therefore, the 1st and the 2nd respondents, being the owner and insurer of the tipper lorry, are jointly, severally liable to pay the compensation to the appellants / claimants. Regarding the above accident, a case in Cr.No.968/2005 was also registered with Sankar Nagar Police Station. Due to the death of the deceased, the appellants herein being the legal heirs and legal representatives suffered a huge loss and accordingly they filed a claim petition before the Tribunal, seeking a compensation amount of Rs.8,00,000/-, however, the Tribunal has only awarded a sum of Rs.6,74,000/-, which is very less. Aggrieved by the said award amount, the present Appeal has been preferred by the appellants.

3. The learned counsel for the appellants submitted that the accident took place in the year 2005 and at the time of accident, the deceased was 29 years and was working as an accountant. While so, the compensation towards loss of expectation of life and loss of love and affection must be



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Rs.20,000/- each, however, the Tribunal has awarded only a sum of

Rs.25,000/- on the whole, which is not sustainable. Further, he mainly

contented that, only a sum of Rs.5,000/- has been awarded towards the

funeral expenses, which needs to be enhanced and from the income which

was arrived at Rs.4,850/- per month, 1/3rd of amount i.e., Rs.1616/-

rounded to R.1,600/- is deducted towards his personal expenses which

needs to be modified as 1/4th of the income of the deceased and the future

prospects has to be fixed at 40 percent and the multiplier has be to 17

instead of 16. Hence, he prayed for enhancement of the compensation

awarded by taking into consideration the above said elements.

4. Heard learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

5. In this case, it can be seen from the contents of the F.I.R which was marked as Ex.P.1 in which the P.W.3 has stated that at the time of accident, the tipper lorry which came at a high speed in the process of turning towards left, dashed against the motor cycle ridden by the deceased, as a result of which, the deceased was thrown out and sustained grievous injuries and



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died on spot and later his body was taken to the hospital with the help of police, from which it is crystal clear that the accident has occurred solely due to the rash and negligent driving of the driver of the tipper lorry. Ex.P.3-charge sheet is laid against the lorry driver, which is in consonance with the evidence given by P.W.3. and the documents Ex.P.1 and Ex.P.2. Further, as there is no contra evidence, the Tribunal, based on the above oral and documentary evidences, has rightly come to the conclusion that the accident has occurred only due to the rash and negligent driving of the driver of the tipper lorry and accordingly, the 1st and 2nd respondent, being the owner and the insurer of the tipper lorry are jointly and severally liable to pay the compensation to the claimants, who are the legal heirs and legal representatives of the deceased.

6. With regard to the salary of the deceased, the Ex.P.11 Salary certificate marked through P.W.4, Human Resources Purchase Officer of Yes Vee Engineering, clearly shows that the deceased was drawing a salary of Rs.4,850/- per month, however, it is pertinent to note that the manager who issued the certificate was not examined before this Court, but the testimony of P.W.4-Purchase in charge of the said company could not be



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discarded as there is no material to discredit his evidence. Further, P.W.1 father of the deceased has asserted that the salary of his son was Rs.4,850/- per month and the same was also confirmed by P.W.2, wife of the deceased. Further, in Ex.P.5-death report of the deceased, his occupation was noted as Office Assistant in Yes Vee Engineering. Hence, the employment and income of the deceased is proved by Ex.P.5 and Ex.P.11 and also by the oral evidence of P.W.1, 2 & 4. Accordingly, in the above said monthly income, the Tribunal has rightly deducted the 1/3rd amount which is rounded to Rs.1,600/- towards the personal expenses of the deceased and Rs.3,250/- is taken as the monthly contribution and Rs.39,000/- as annual contribution, which cannot be interfered with.

7. With regard to the age of the deceased, Ex.P.8, Xerox copy of the driving licence of the deceased has been taken into account by the Tribunal, in which the date of birth of the deceased is noted as 15.08.1975, accordingly, the age of the deceased was 30 years at the time of accident. Hence, considering the age of the deceased and the age of the widow and all other circumstances, 16 is selected as multiplier by the Tribunal for calculating the damages towards loss of pecuniary benefits and various



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heads, and the same are arrived at as follows:

Sl.No	Heads	Calculation (Rs.)
1.	Annual Contribution	Income*12 = 3250*12 = 39,000/-
2.	Loss of pecuniary benefits	39000*16 = 6,24,000/-
3.	Loss of consortium	20,000/-
4.	Loss of expectation of life and loss of love and affection	25,000/-
5	Funeral expenses	5,000/-
	Total	6,74,000/-

8. The Loss of pecuniary benefits and the loss of consortium arrived at by the tribunal is correct and legal which does not warrants interference of this Court, however, with regard to the loss of expectation of life and loss of love and affection, the tribunal has arrived at only a sum of Rs.25,000/- which is not reasonable and accordingly, this Court is inclined to enhance the same and an additional sum of Rs.20,000/- each is awarded to the claimants herein. Further, only a meagre sum of Rs.5,000/- is awarded for Funeral expenses, which is not acceptable and the same is enhanced to Rs.15,000/-. Hence, the total compensation of Rs.6,74,000/- awarded by the Tribunal is modified to Rs.7,84,000/- and the details of the same are as follows:



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<i>Head</i>	<i>Compensation awarded by the Tribunal (Rs.)</i>	<i>Compensation enhanced / reduced by this Court (Rs.)</i>
Loss of pecuniary benefits	6,24,000/-	6,24,000/-
Loss of consortium	20,000/-	20,000/-
Loss of expectation of life and loss of love and affection	25,000/-	1,25,000/-
Funeral Expenses	5,000/-	15,000/-
Total	6,74,000/-	7,84,000/-

9. In fine, this Appeal is partly allowed. The 2nd respondent/ Insurance company is directed to deposit the aforesaid modified compensation amount together with an interest at the rate of 7.5% per annum from the date of petition till the date of deposit, 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 the M.C.O.P.No.2643/ 2006 on the file of the Learned Motor Accident Claims Tribunal cum Chief Judge, Small Causes Court, Chennai. However, it is pertinent to note that, the appellants are not entitled to any interest for the delay period as mentioned in C.M.P.No.8900 of 2016. The modified amount shall be disbursed in favour of the claimants as per the ratio of apportionment mentioned in the award passed by the Tribunal within a period two weeks



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thereafter. No Costs.

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Index : Yes/No

Speaking Order : Yes/No

To:

1.TheMotor Accident Claims Tribunal cum Chief Judge,
Small Causes Court, Chennai

2.The Section Officer,
VR Section,
Madras High Court.



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J.SATHYA NARAYANA PRASAD, J.

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