



C.M.A.No.2998 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	13.04.2023
Pronounced on	27.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND**

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.No.2998 of 2021

1.Muththayal

2.Natrajan @ Nataraj

...Appellants

Vs.

1.Dr.A.Murugan

2.The Royal Sundaram Alliance Insurance Co. Ltd.,

Sundaram Towers, No.46, Whites Road,

Royapettai, Chennai

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, appeal against the award and decree dated 12.09.2013 made in M.C.O.P.No.23 of 2012 on the file of the Motor Accidents Claims Tribunal III



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Additional District Court, Erode at Gobichettipalayam,

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For Appellant : Mr.Ma.P.Thangavel
For R1 : No appearance
For R2 : Mr.C.Harini

JUDGMENT

(Judgment of the Court was delivered by K.GOVINDARAJAN THILAKAVADI,J.)

The claimants before the Motor Accident Claims Tribunal III Additional District Court, Erode at Gobichettipalayam, in M.C.O.P.No.23 of 2012 are the appellants in this Civil Miscellaneous Appeal.

2.Aggrieved by the insufficiency of the compensation awarded by the Tribunal, the claimants have brought forth the above C.M.A.No.2998 of 2021 directed against the award dated 12.07.2013 passed by the Motor Accident Claims Tribunal (III Additional District Judge), Erode at Gobichettipalayam, in M.C.O.P.No. 23 of 2012 directing the 1st respondent to pay a sum of Rs.41,16,000/- together with interest at the rate of 7.5% per annum from the date



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of claim, till the date of realization for the death of one Velusamy in a road accident.

3.The appellants herein/claimants preferred a claim on the file of Motor Accident Claims Tribunal (III Additional District Judge), Erode @ Gobichettipalayam, in M.C.O.P.No.23 of 2012 praying for an award against the respondents for the death of Velusamy who met with an accident on 20.01.2012 at about 17.30 hours.

4.The facts can be briefly stated as:

The deceased Velusamy was riding his motor cycle bearing Registration No. TN-33-AF-9828 on Anthiyur to Sathy main road near Muniappampalayam, Kannimaran Koil, from east to west direction on the extreme left side of the road at moderate speed. At the time, the 1st respondent was driving his car bearing Registration No.TN-36-M-2226 in the opposite direction with high speed and in a rash and in negligent manner without observing road Rules and hit against the deceased Velusamy. Thereby he sustained fatal injuries on his head, chest, both



legs and all over the body and died on the spot.

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The deceased was aged about 29 years and he was hale and healthy at the time of accident. He was working as a driver through which he earned a monthly income of Rs.9000/-. The 1st respondent is the driver cum owner of the offending vehicle and the 2nd respondent is the insurance company. The 1st and 2nd respondents are jointly and severally liable to pay the compensation claimed by the claimants. The appellants being the sole legal heirs of the deceased, claimed a total compensation of Rs.15,00,000/- from the respondents.

5.In order to prove their case, the 2nd claimant has examined himself as P.W.1 and also examined P.W.2 one M.Gandhi and P.W.3 one Subramaniyan. They have relied upon 9 documents, marked as Ex.P.1 to P.9.

6.The 3rd respondent filed a counter statement, resisting the claim of the appellant/claimant contending that the accident had happened only due to the carelessness of the deceased. It is further submitted that two vehicles were involved



in the accident and therefore, the owner and Insurance Company of the Motor Cycle ought to have been impleaded as necessary parties in this proceedings. The further contention of the 2nd respondent is that the deceased drove the vehicle without any license and the vehicle involved in the accident does not have valid fitness certificate and valid Insurance policy on the date of accident. It is further submitted that the compensation claimed by the claimants is highly excessive. Hence, the claim petition should be dismissed with cost. In support of their claim, no witness was examined and no document was marked.

7.After completion of recording of evidence, the Tribunal heard the arguments advanced on either side, framed the necessary points for consideration regarding the negligence and quantum. The Tribunal after scrutinizing the records, appreciated the evidence, held that the rash and negligent driving of the Car bearing Registration No.TN-36-M-2226 belonging to the 1st respondent by its driver was the sole cause of the accident and held that the 1st and 2nd respondents as owner and insurer of the above vehicle were jointly and severally liable to pay compensation to the appellant/claimant. The Tribunal assessed the damages at Rs.4,16,000/- and passed an award directing the respondents to pay the said



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amount along with interest at the rate of 7.5% per annum from the date of claim till the date of realization with proportionate costs.

8.Hence, attacking the judgment of the Tribunal, so far as the disallowed portion of the claim is concerned, this appeal has been brought forth at the instance of the appellant/claimant.

9.This court heard the arguments advanced in this appeal on either side and paid its anxious consideration of the same.

10.The learned counsel appearing for the Appellant/claimant would contend that the amount awarded by the Tribunal is very low and the same has got to be substantially enhanced. The Tribunal has awarded a sum of Rs.4,16,000/- alone as against the claim of Rs.15,00,000/- He further contends that the deceased at the time of accident was working as a driver earning a sum of Rs.9000/- per month. To substantiate the same, the claimants have filed the salary certificate of the deceased marked as Ex.P.9. However, the Tribunal has fixed the monthly income of the



deceased at Rs.5,000/- per month for the accident took place in the year 2012 without any basis. It is further submitted that the Tribunal failed to add 40% for future prospects as per the *Sarla Verma case* and also failed to award Rs.50,000/- each towards love and affection to the parents and the Tribunal erred in not awarding any amount for transport expenses. Hence, the learned counsel for the appellant/claimant prays for enhancement of compensation for the above said reason.

11.On the other hand, the learned counsel appearing for the respondents would contend that the Tribunal has rightly awarded a just compensation and calls for no interference.

12.There is no dispute about the manner of accident and the liability fixed on the driver of the offending vehicle, for causing the accident. According to the claimants on 20.01.2012 at about 17.30 hours, while the deceased Velusamy was riding his motor cycle bearing Reg No.TN-33-AF-9828 on Andhiyur to Sathy main road near Muniappampalayam, Kannimaran koil, a car belonging to the first



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respondent and insured with the second respondent came in the opposite direction in a rash and negligent manner and dashed against the deceased, causing the fatal accident, as a result of which the said Velusamy succumbed to grievous injuries.

13.The contention of the learned counsel for the claimants/appellants is that the compensation arrived at by the Tribunal is on lower side.

14.The Tribunal has fixed the monthly income of the deceased at Rs.5000/ and accordingly arrived at a sum of Rs.60,000/- as annual income. After deducting 50% amount towards his personal expenses, the Tribunal awarded a sum of Rs.30,000/- towards "Annual loss of income" of the deceased to the claimants family. The Tribunal applying the multiplier of "13" arrived at a sum of Rs.3,90,000/- towards total loss of income.

15.The claimants have produced Exs.P.9 Salary Certificate to establish that the deceased at the time of the accident was earning a sum of Rs.9000/- per month by working as a driver. The driving licence of the deceased was not marked on the



side of the claimants to prove that the deceased was working as a driver at the time of the accident. However, the respondent has not established that the deceased was not working as a driver at the time of the accident. Hence, the monthly salary of the deceased is fixed at Rs.8000/- as notional income. Since the deceased age was 29 years at the time of accident, as per the principles laid down in *Sarla Verma Case*, the multiplier "17" is to be adopted. The Tribunal has erroneously adopted multiplier "13" which is incorrect. Considering the monthly income of the deceased as Rs.8000/- and after deducting 50% towards personal expenses, the dependency has to be fixed at Rs.4000/-. Thus, the annual dependency shall come to $4000 \times 12 = \text{Rs.}48,000$. By applying the multiplier "17" the compensation available to the claimants under the head 'total loss of income' would be $(\text{Rs.}48,000 \times 17) = \text{Rs.}8,16,000/-$. As per the principles laid down in *Pranay Sethi's* case the deceased is entitled for 40% future prospects. Therefore, a sum of $[\text{Rs.}8,16,000 + 40\%(\text{i.e. Rs.}3,26,400) = \text{Rs.}11,42,400/-]$ is awarded for loss of income. The Hon'ble Apex Court in the case of *Magma General Insurance Company limited vs, Nanu Ram alias Chuhru Ram and others* reported in **(2018) 2 TN MAC 452** held that the parents are entitled for filial consortium of Rs.40,000/- each. Hence, a sum of Rs.80,000/- is awarded towards filial



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consortium. Towards loss of estate a sum of Rs.15,000/-, towards loss of funeral expenses a sum of Rs.15,000/- and for transport expenses a sum of Rs.5000/- is awarded. Thus, the claimants are entitled to total compensation of Rs.12,57,400/-.

16.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is hereby enhanced from Rs.4,16,000/- to Rs.12,57,400/-. The 2nd respondent is directed to deposit the said enhanced amount along with interest at 7.5% per annum from the date of claim, except the condone delay period, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposits, the claimants are permitted to withdraw the compensation amount as apportioned by the Tribunal by filing necessary application before the Tribunal. In other aspects the award of the Tribunal is confirmed. No costs.

(D.K.K.,J.) (K.G.T.,J.)

27.04.2023

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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To:-

The Motor Accident Claims Tribunal,
(III Additional District Judge),Erod, Gopichettipalayam.

D.KRISHNAKUMAR, J.
and



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K.GOVINDARAJAN THILAKAVADI, J.

vsn

**Pre-delivery order made in
C.M.A.No.2998 of 2021**

27.04.2023