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C.M.A.No.598



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.598 of 2022

1.K.Santhi
2.K.Saravanan
3.K.Kavikumar

Govindammal (died)

... Appellants

(Cause title accepted vide Court
order dated 10.01.2022 made in
C.M.P.No.156 of 2022 in C.M.A.
SR.No.118889 of 2021)

Vs.

1.R.Basheerudeen

2.The Divisional Manager
United India Insurance Company Limited
Motor Third Party Claim Office
No.147/58-C, 3rd floor
Kamarajar street
Kanchipuram.

... Respondents

(No relief sought against the 1st respondent.
Hence, notice may be dispensed with)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles

Act, 1988 praying against the judgment and decree dated 18.03.2019 made in



M.C.O.P.No.344 of 2017 on the file of the Motor Accidents Claims Tribunal, District Court-II, Kanchipuram.

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For Appellants : Mr.C.Prabakaran

For R2 : Mr.M.J.Vijayaraghavan

JUDGMENT

The appeal is filed by the appellants/claimants for enhancement of compensation granted by the Tribunal in the award dated 18.03.2019 made in M.C.O.P.No.344 of 2017 on the file of the Motor Accidents Claims Tribunal, District Court-II, Kanchipuram.

2. The brief facts leading to the appeal are that, on 07.12.2006 at about 6.30 a.m., while the deceased Kamalakannan was riding a cycle on the extreme left side of the mud road towards Manampathy, near Puthu Koil, the driver of the bus bearing Registration No.TN-23-AB-6898 belonging to the 1st respondent, insured with the 2nd respondent, drove the same in a rash and negligent manner, hit against the deceased Kamalakannan, due to which, he sustained injuries all over his body and died on the way to hospital. According to the appellants/claimants, the accident occurred due to rash and negligent driving by the driver of the bus belonging to the 1st respondent.

The deceased Kamalakannan was aged 42 years at the time of accident and was doing



goat business and was earning a sum of Rs.15,000/- per month. Therefore, the widow, sons and mother of the deceased Kamalakannan filed Claim Petition claiming a sum of Rs.24,00,000/- as compensation.

3. Before the Claims Tribunal, the 1st respondent, owner of the bus remained exparte and the Claim Petition was contested by the 2nd respondent/Insurance Company. The 2nd respondent/Insurance Company filed a detailed counter denying all the averments raised in the Claim Petition including negligence, liability and quantum of compensation.

4. Before the Claims Tribunal, in support of their claim, the 3rd appellant/3rd claimant, son of the deceased examined himself as P.W.1 and marked Exs.P1 to P10. The respondents neither examined any witness nor marked any documents.

5. The Claims Tribunal, on an assessment of the entire evidence on record, rendered the finding of negligence against the driver of the bus belonging to the 1st respondent, assessed the compensation at Rs.10,90,000/- along with 7.5% interest and mulcted the entire liability on the 2nd respondent/Insurance Company. Not satisfied with the quantum of compensation awarded by the Claims Tribunal, the appellants/claimants have filed the above appeal for enhancement of compensation.



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6. Learned counsel for the appellants submitted that the income claimed by the appellants was Rs.15,000/- per month. Whereas the Tribunal fixed notional income of the deceased at Rs.6,000/- per month, which is very much meagre. Learned counsel further submitted that the Tribunal erred in awarding only a sum of Rs.1,15,000/- towards loss of consortium to the appellants. The appellants/claimants are entitled to the compensation at Rs.1,60,000/- towards loss of consortium. On these grounds, the learned counsel prayed for enhancement of compensation.

7. Learned counsel for the 2nd respondent/Insurance Company on the other hand submitted that the award of the Tribunal was fair, just and reasonable and did not call for any interference in the appeal.

8. I have heard the learned counsel for the appellants and the learned counsel for the 2nd respondent and perused the materials available on records.

9. According to the appellants/claimants, the accident occurred in the year 2006, the deceased was aged 42 years at the time of accident, he was doing goat business and was earning a sum of Rs.15,000/- per month. The Tribunal in the absence of any evidence with regard to income, assessed the notional income of the deceased at Rs.6,000/- per month which in my view, is very much meagre. No doubt, there is no proof in support of the income of the deceased. Considering the cost escalation for



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the year 2006 and the fact that the deceased was maintaining a family of five members including himself, I am of the view that the notional income can be fixed at Rs.7,500/- per month. The Tribunal has rightly added 25% towards future prospects, applied multiplier '14' and deducted 1/4th towards personal expenses of the deceased. If 25% is added towards future prospects i.e. Rs.1,875/- (Rs.7,500/- X 25/100), the income would be Rs.9,375/- (Rs.7,500/- + 1875). If 1/4th is deducted towards personal expenses of the deceased, it comes to Rs.7,031/- (Rs.9,375/- - 2,344), which is rounded off to Rs.7,000/-. Thus, by fixing income of the deceased at Rs.7,000/- per month, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.11,76,000/- (Rs.7,000/- X 12 X 14). Therefore, the appellants/claimants are entitled to Rs.11,76,000/- towards loss of dependency.

10. It is submitted by the learned counsel for the appellants that 4th appellant died after passing of the award by the Tribunal. The memo filed by the appellants to accept the cause title was ordered vide order of this Court dated 10.01.2022 in C.M.P.No.156 of 2022 in C.M.A.SR.No.118889 of 2021. In view of the same, the appellants 1 to 3 shall be entitled to Rs.40,000/- each towards loss of consortium. The amounts awarded by the Tribunal under the heads “loss of estate, funeral & transport expenses” are hereby confirmed.



11. In view of the above discussions, the award of the Tribunal is modified as follows:

<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Loss of dependency	Rs.9,45,000/-	Rs.11,76,000/-
2.	Loss of estate	Rs.15,000/-	Rs.15,000/-
3.	Loss of consortium to the appellants 1 to 3	Rs.1,15,000/-	Rs.1,20,000/- (Rs.40,000/- X 3)
4.	Funeral and transport expenses	Rs.15,000/-	Rs.15,000/-
Total Compensation		Rs.10,90,000/-	Rs.13,26,000/- enhanced amount Rs.2,36,000/-

The appellants/claimants are entitled to the total compensation of Rs.13,26,000/- along with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

12. Learned counsel for the 2nd respondent/Insurance Company submitted that entire amount awarded by the Tribunal along with accrued interest and costs was deposited before the Tribunal. It is submitted by the learned counsel for the appellants/claimants that all the four claimants had withdrawn the entire award amount deposited in the Tribunal.

13. In view of the above submissions, there shall be a direction to the 2nd respondent/Insurance Company to deposit the enhanced compensation of Rs.2,36,000/- along with 7.5% 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.

On such deposit being made, the appellants/claimants shall be entitled to withdraw the same as per the ratio of apportionment made by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by making proper application before the Claims Tribunal.

14. It is submitted by the learned counsel for the appellants that appeal was restricted to Rs.2,00,000/-. Therefore, the appellants are directed to pay the deficit Court fee for the balance enhanced amount. The Registry is directed not to draft the decree till the additional Court fee is received.

15. The appeal is accordingly partly allowed. There shall be no order as to costs.

13.06.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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N.MALA.J.,



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1.The District Judge, District Court-II
Motor Accidents Claims Tribunal
Kanchipuram.

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

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