



C.M.A.No.2252 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 26.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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- 1.Pavathal
- 2.Sumathi
- 3.Minor.Manushri
- 4.Minor.Shririthanya
- 5.Minor.Dharunjayanth

... Appellants

Versus

- 1.Arunkumar
- 2.Sree Saradhambal Automobiles
Erode Private Limited, Having office
At D.No. 23/1, Perundurai Road,
Kumalankuttai, Erode – 638 011.
- 3.T.Shanmugasundaram
- 4.The National Insurance Company Ltd.,
Having its branch office at Coimbatore
Division-II, 16, State Bank Road,
Coimbatore.
- 5.Sree Saradhambal Automobiles
Erode Private Limited, Having office
At D.No. 542, Kovai Main Road,
Perundurai, 638 052.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking to set aside the judgment and decree dated



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25.07.2023 made in M.C.O.P.No.11 of 2019 on the file of the Motor

Accident Claims Tribunal, Special District Judge, Erode.

For Appellants : Mr.V.S.Kesavan
For R4 : Mr.J.Chandran

JUDGMENT

The claimants have preferred the instant appeal seeking enhancement of compensation.

2.The appellants/claimants had filed the claim petition stating that on 29.01.2018, at about 01.00 PM; while the deceased was riding his motor cycle on the public road, the driver of the car insured with the 4th respondent herein came in a rash and negligent manner, dashed against the vehicle of the deceased; that as a result of which, the deceased sustained fatal injuries and thus, the appellants are entitled for compensation.

3.The 1st respondent filed a counter stating that the accident took place only due to the negligence of the deceased and that in any case, since the car was insured with the 4th respondent, the 4th respondent is liable to pay the compensation.



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WEB COPY 4.The 3rd respondent-owner of the offending vehicle remained *ex-parte* before the Tribunal.

5.The respondents 2 and 5 filed a counter stating that the offending vehicle was insured with the 4th respondent and if any liability arises the same has to fastened on the 4th respondent.

6.The 4th respondent filed a counter stating that the accident took place only due to the negligence of the deceased; and that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the appellants examined P.W1 and P.W2 and marked Ex.P1 to Ex.P24. The 4th respondent examined R.W1 and did not mark any document.

8.The Tribunal after considering the oral and documentary evidence held that the accident took place due to the negligence of the driver of the offending vehicle insured with the 4th respondent herein and



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directed the 4th respondent to pay the compensation of Rs.15,04,040/- to the appellants.

9.The learned counsel for the appellants submitted that the compensation awarded by the Tribunal is meagre in as much as low monthly notional income of Rs.6,500/- was fixed by the Tribunal and hence, prayed for enhancement of compensation.

10.The learned counsel for the appellants further submitted that the 3rd respondent remained *ex-parte* before the Tribunal and the respondents 1, 2 & 5 are not necessary parties in the instant appeal and therefore, he requested this Court to dispense with notice to the respondents 1 to 3 and 5 and he had also made an endorsement to that effect. Hence, notice to the respondents 1 to 3 and 5 is dispensed with.

11.The learned counsel for the 4th respondent per contra submitted that the compensation awarded by the Tribunal is just and reasonable and no interference is called for and therefore, prayed for dismissal of the appeal.



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12.The only question involved in the present appeal is whether the compensation awarded by the Tribunal is just and reasonable?

13.On perusal of the records, it is seen that the appellants had established the fact that deceased was doing agricultural business and was also a running photo studio. The accident took place in the year 2018 and the deceased was aged 39 years at the time of accident. Considering the age of the deceased, his avocation and the year of accident, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.12,500/- per month. Further, the appellants are entitled to 40% enhancement towards future prospects and the correct multiplier applicable is 15. After deducting 1/4 towards personal expenses, the award of compensation under the head loss of income or dependancy has to be as follows:

$$\text{Rs.17,500/- (Rs.12,500 + 40\%) X 12 X 15 X } \frac{1}{4} = \text{Rs.23,62,500/-}$$

The amount awarded by the Tribunal under other heads is just and reasonable and the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependancy	12,28,500	23,62,500	Enhanced
2.	Loss of spousal consortium for the 2 nd appellant	40,000	40,000	Confirmed
3.	Loss of parental Consortium for the appellants 3 to 5	1,20,000	1,20,000	Confirmed
4.	Loss of filial consortium for the 1 st appellant.	40,000	40,000	Confirmed
5.	Funeral expenses	15,000	15,000	Confirmed
6.	Loss of estate	15,000	15,000	Confirmed
7.	Ambulance charges and Medical expenses	45,540	45,540	Confirmed
	Total	15,04,040	26,38,040	Enhanced by Rs.11,34,000/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,04,040/- is hereby enhanced to Rs.26,38,040/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 4th respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if



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any, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment. On such deposit, the 1st appellant is permitted to withdraw a sum of Rs.2,00,000/-; the 2nd appellant is permitted to withdraw a sum of Rs.12,00,000/-, along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants 3 to 5 are entitled to share the remaining award amount equally. The share of the minor appellants 3 to 5 are directed to be deposited in any one of the Nationalised Bank, till the minors attain majority. The 2nd appellant-mother of the appellants 3 to 5 is permitted to withdraw the accrued interest once in three months. The appellants are directed to pay the necessary Court fee, if any, on the enhanced award amount. No costs.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Special District Judge, ,
The Motor Vehicle Accident Tribunal,
Erode.

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



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SUNDER MOHAN, J.

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