



C.M.A.No.627 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.627 of 2020

1. Lakshmi
2. Sivakami
3. Thangamani
4. K.C.Palanisamy

...Appellants

Vs.

1. K.Rajasekar
2. M.Periyasamy
3. The New India Assurance Co. Ltd.,
Post Box No.47, Kumaran Shopping Complex,
Kumaran Road, Tiruppur – 641 601.
Coimbatore District.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, for enhancement of the compensation amount awarded in the Judgment and decree dated 10.02.2009 made in MCOP.No.350 of 2007 on the file of the Motor Accidents Claims Tribunal / First Additional Sub Court, Erode.



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For Appellants : Mr.N.Manokaran

For Respondents : R1-Died (Steps due)
Not ready notice, for R2
Mr.M.Krishnamoorthy, for R3

JUDGEMENT

Challenging the judgment and decree dated 10.02.2009 made in MCOP.No.350 of 2007 on the file of the Motor Accidents Claims Tribunal/ First Additional Sub Court, Erode, the claimants are before this Court.

2. The case of the appellants is that, on 30.05.2007 at about 05.30 p.m., when the deceased Chenniappan was riding his motor cycle bearing Regn.No. TN-33-AW-3236 along with one Palaniappan as pillion rider on Kunnathur to Perundurai Main Road, a van bearing Regn.No.TN-39-AH-4191 owned by the 2nd respondent, insured with the 3rd respondent, driven by the 1st respondent herein in a rash and negligent manner came in an uncontrollable speed and hit against the motor cycle driven by the deceased, due to which, the said Chenniappan sustained grievous injuries all over his body and died on the way to hospital. Thereby, the appellants herein filed a claim petition claiming a



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compensation of Rs.10,00,000/-. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.1,67,740/-. Aggrieved with the said order, the present appeal has been filed by the claimants seeking enhancement of the compensation fixed.

3. Learned counsel appearing for the appellants submitted that admittedly, the above said accident occurred solely due to the rash and negligent driving of the 1st respondent, due to which, the husband of the 1st appellant and father of the appellants 2 to 4 lost his life and for the said accident, an FIR also came to be registered as against the 1st respondent. Further, at the time of the accident, the deceased was aged about 60 years and was receiving a pension amount of Rs.8,074/- per month i.e.,Rs.96,888/- per annum and was also earning a sum of Rs.15,000/- by doing agriculture and totally the income earned by the deceased was about Rs.23,074/- per month i.e.,Rs.2,76,888/- per annum. However, the tribunal had fixed the income earned by the deceased from agriculture as Rs.2,000/- alone and held that the total income earned by the deceased is Rs.1,20,888/- per annum, which is not sustainable. Further, at the time of accident, the deceased was aged about 60



years, however, instead of taking the multiplier as 9, the tribunal had wrongly taken the multiplier as 5 which necessarily needs to be modified. Further, the compensation awarded under other heads are also meagre and the same has to be enhanced. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the 3rd respondent/Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

5. Heard the learned counsel for the appellants and the learned counsel appearing for the 3rd respondent and perused the materials available on record.

6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievances of the appellants/claimants is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the appellants that at the time of accident, the deceased was owning 25 acres of agricultural lands in which he was doing cultivation and he also owned a cattle farm and was doing milk



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ending and the deceased also conducted tuitions in the evening hours and from the above said avocations, he was earning about Rs.15,000/- per month, however, the tribunal had taken into account only Rs.2,000/- as the monthly income earned by the deceased apart from the pension amount received by him. To prove that the deceased was earning Rs.15,000/-, no document was submitted by the appellants/ claimants. Hence, in the absence of any documentary evidence, necessarily, the Tribunal had fixed the notional earning of the deceased at Rs.2,000/- apart from the pension amount, which finding is just and reasonable and cannot be interfered with.

7. Further, as rightly pointed out by the learned counsel for the appellants, at the time of accident the deceased was aged about 60 years, however, the Tribunal had adopted the multiplier of 5 which is contrary to the law laid down by the Hon'ble Apex Court. Hence, this Court is inclined to adopt the multiplier of 8 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, and the loss of income to the family is worked out as follows:-



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Loss of Income	Amount (in Rs.)
Pension amount received by the deceased Chenniappan	8,074
Less: 50% of the pension amount (as the 1 st appellant/wife of the deceased receives 50% family pension)	4,037
Loss of income toward pension (per annum) (4,037*12)	48,444
Income earned by the deceased from other avocations after retirement (per annum) (2000*12)	24,000
Total Loss of earnings per annum	72,444
Less: Personal expenses @ 1/3 rd of Rs.72,444/-	48,296
Multiplier	9
Total	4,34,664

8. A sum of Rs.5,000/- has been granted to the 1st appellant under the head of "loss of consortium", which is very meagre and the same is enhanced to a sum of Rs.40,000/-. Further, a sum of Rs.5,000/- has been awarded under the head "funeral expenses" which is enhanced to Rs.15,000/-. Further, no compensation was awarded under the heads "love and affection" and "loss of estate" and therefore, a sum of Rs.1,20,000/- (40,000/-*3) and Rs.15,000/- respectively is awarded under the said heads.

9. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-



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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of Income	1,60,740/-	4,34,664/- (enhanced)
Loss of love and affection (Rs.40,000/- x 3)	-	1,20,000/-
Loss of consortium	5,000/-	40,000/-
Funeral Expenses	2,000/-	15,000/-
Loss of estate	-	15,000/-
Total	1,67,740/-	6,24,664/-

10. Accordingly, the appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.1,67,740/-** to **Rs.6,24,664/-**. The 3rd respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.350 of 2007 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. The appellants are not entitled for interest for the default period. The said award amount shall be apportioned amongst the appellants/claimants as per the Award of the Tribunal. On such deposit being made, the Tribunal is directed to transfer the



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said amount directly to the bank account of the appellants through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants. There shall be no order as to costs in the present appeal.

19.12.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

- 1.The Motor Accidents Claims Tribunal / First Additional Sub Court,
Erode.
- 2.The Section Officer,
V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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