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C.M.A.No.3619 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3619 of 2019

1.D.Dhanamani
2.N.Amirthavalli
3.D.Vijayakumar

... Appellants

Vs.

1.P.Shanmuganathan

2.IFFCO-TOKIO General Insurance Company Ltd.,
having office at
Tulsi Chambers, 3rd Floor,
No.195, T.V.Swami Road (West),
R.S.Puram, Coimbatore,
having head office at
3rd Floor, 3rd Block, KSCMF Building,
No.8, Cunningham Road,
Bangalore – 560 003.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded in M.C.O.P. No.1650 of 2009 dated 10.10.2012 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) Tirupur.



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For Appellants : Mr.K.Varadha Kamaraj

For Respondents : R1 – Not Ready Notice
Mr.C.R.Krishnamoorthy for R2

J U D G M E N T

This appeal has been filed against the judgment and decree dated 10.10.2012 passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) Tirupur, in M.C.O.P.No.1650 of 2009.

2.The learned counsel appearing for the appellants submitted that on 26.11.2009 at about 12.30 p.m., the deceased C.Duraisamy was riding a TVS 50 Moped bearing Registration No.TN-39-D-4511, towards East to West direction on Coimbatore to Trichy Main Road near Chettipalayam Pirivu. At that time, a Innova Car bearing Registration No.TN-28-AC-1140, driven by the first respondent came in a rash and negligent manner, in the same direction and dashed behind the deceased, due to which, the said C.Duraisamy lost his life.

3.The learned counsel appearing for the appellants further submitted that thereafter, the wife, daughter and son of the deceased C.Duraisamy / appellants filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.25 Lakhs.



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However, the Tribunal awarded only a sum of Rs.1,43,117/- as compensation to the claimants. The learned counsel further submitted that the amount awarded by the Tribunal is very meagre.

4.The learned counsel appearing for the appellants further submitted that the Hon'ble Apex Court in Syed Sadiq case fixed a sum of Rs.6,500/- as monthly income to the vegetable vendor. In the present case, the Tribunal has fixed the notional monthly income of the deceased as Rs.4,500/- and thereafter calculated the loss of income per month as Rs.2,000/-. The learned counsel further submitted that the Tribunal instead of adopting the multiplier 7 adopted the multiplier 5 and awarded a sum of Rs.1,20,000/- for loss of income and hence, the appellants/ claimants are entitled for enhancement of compensation.

5.The learned counsel appearing for the second respondent Insurance Company submitted that the Tribunal after considering all the factual aspects, awarded the compensation which is just and reasonable and hence, the impugned judgment warrants no interference.



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6.Heard the learned counsel appearing for the appellants claimants as well as the learned counsel appearing for the second respondent Insurance Company and perused the materials available on record.

7.The accident and the manner in which the accident happened are not disputed. This appeal has been filed only questioning the quantum of compensation.

8.The tribunal after elaborately discussing the factual aspects awarded a sum of Rs.1,20,000/- for loss of income, Rs.10,000/- for loss of love and affection, Rs.5,000/- for loss of consortium, Rs.3,117/- for medical expenses, Rs.5,000/- for funeral expenses and arrived at a total compensation of Rs.1,43,117/- with interest at the rate of 7.5%p.a. from the date of petition till the date of deposit and costs.

9.The amount awarded by the Tribunal for loss of income is contrary to the decision of the Hon'ble Apex Court reported in MANU/SC/1366/2017 [National Insurance Company Limited Vs. Pranay Sethi and others] and decision of the Hon'ble Apex Court in Syed Sadiq



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case. The Hon'ble Apex Court in Syed Sadiq case fixed Rs.6,500/- as the notional income of the vegetable vendor in the year 2008. In the present case, the accident happened during the year 2012. Hence, this Court fix the notional income of the deceased as Rs.6,500/- per month and after deducting 1/3 towards his personal expenses, the notional monthly income of the deceased comes to Rs.4,333/-. The deceased was aged 62 years at the time of death. Hence, the correct multiplier to be adopted is 7. Hence, amount awarded for loss of income works out to Rs.3,63,972/- [Rs.4,333/- X 12 X 7 = Rs.3,63,972/-].

10.The amount awarded under the head medical bills is confirmed. The amount awarded under the other heads, in the opinion of this Court is low and this Court is inclined to enhance the amount awarded under the other heads. Accordingly, the amount awarded for loss of love and affection is enhanced to Rs.1,20,000/- from Rs.10,000/-, the amount awarded for loss of consortium is enhanced to Rs.15,000/- from Rs.5,000/-, the amount awarded for funeral expenses is enhanced to Rs.15,000/- from Rs.5,000/-.



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11. Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of Income	Rs.1,20,000/-	Rs.3,63,972/-
2.	Loss of love and affection	Rs. 10,000/-	Rs.1,20,000/-
3.	Loss of consortium	Rs. 5,000/-	Rs. 15,000/-
4.	Medical expenses	Rs. 3,117/-	Rs. 3,117/-
5.	Funeral expenses	Rs. 5,000/-	Rs. 15,000/-
	Total	Rs.1,43,117/-	Rs.5,17,089/-

12. The appellants claimants are entitled to total compensation of Rs.5,17,089/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

13. The civil miscellaneous appeal is allowed. The judgment and decree passed in M.C.O.P.No.1650 of 2009 dated 10.10.2012 by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) Tirupur, is modified to the above extent.

14. The second respondent Insurance Company is directed to deposit the modified/ enhanced award amount before the Tribunal



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within a period of four weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the appellants/ claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The appellants/ claimants shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellants/ claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accidents Claims Tribunal (Chief Judicial Magistrate) Tirupur, shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellants/ claimants.

15.The civil miscellaneous appeal is allowed. No costs.

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal

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(Chief Judicial Magistrate) Tirupur.

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M.DHANDAPANI,J.
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