



C.M.A.No.4264 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.No.4264 of 2019

1. Muniammal
2. Minor Kokila
3. Minor Abi

[Minor appellants represented by their mother/natural guardian,
viz., Muniammal, the first appellant herein]

... Appellants /Petitioners

Vs.

1. D.Sabarinath
[R1 remained ex-parte before Tribunal.
Hence, notice to R1 dispensed with]

2. The Royal Sundaram Alliance Insurance Co. Ltd.,
No.5, R.J.Plaza, Katpadi Main Road,
Virudampet, Vellore.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 30.01.2014 made in M.C.O.P.No.163 of 2012 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Tiruvallur at Poonamallee.

For Appellants : Mrs.DJearany.G
For R1 : Dispensed with
For R2 : Mr.M.Krishnamoorthy



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This Civil Miscellaneous Appeal has been filed by the appellants seeking enhancement of compensation awarded by the Tribunal dated 30.01.2014 in M.C.O.P.No.163 of 2012, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Tiruvallur at Poonamallee.

2. The parties are referred to hereunder according to status and ranking before the trial Court.

3. The claimants are the dependents of one Sudhakar. On 09.01.2012 at about 5.15 p.m., while Sudhakar was driving a goods van bearing Registration No.TN 22 AM 2396 on the Oragadam-Kancheepuram Road, near Kunnavakkam Junction, Kancheepuram District, a Lorry bearing Registration No.TN 21 J 3577, came in a rash and negligent manner, hit against the goods van, due to which, the said Sudhakar sustained fatal injuries and succumbed for the same. Hence, the claimants filed Claim Petition, claiming compensation for a sum of Rs.10,00,000/- from both the owner and insurer of the lorry.

4. Before the Tribunal, the first respondent-owner of the offending vehicle remained ex-parte and the second respondent Insurance



Company has contested the claim by contending that due to the negligent act of the driver of the van, the accident occurred, the driver of the lorry was not responsible for the accident and the respondent is not liable to pay compensation. The claimants have to prove the age, income and legal heir of the deceased and they are not entitled to claim compensation from the respondents. In any event, the quantum of compensation awarded is on the higher side and prays to dismiss the claim.

5. Before the Tribunal, on the side of the petitioners, P.W.1 to P.W.3 were examined and Exs.P1 to P9 were marked. On the side of the second respondent, no witnesses was examined and no documents marked.

6. Based on the evidence placed on record, the Tribunal has awarded a sum of Rs.8,86,000/- as compensation on the following heads: For Loss of dependency a sum of Rs.8,16,000/-; For Loss of Consortium a sum of Rs.25,000/-; For Transportation and Funeral expenses a sum of Rs.15,000/- and for Love and Affection to each claimants a sum of Rs.30,000/-.

7. Aggrieved over the award of compensation the claimants have filed this appeal for enhancement of compensation. The respondents have not filed any appeal against the award.



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8. The learned counsel for the appellants/claimants submitted that the notional income fixed on the deceased in this case is on lower side and the deceased is being a driver, his income is ought to have assessed at Rs.10,000/- per month, in view of the Judgement of the Hon'ble Apex Court in ***Parminder Singh vs. New India Assurance Company Ltd., and Others*** reported in ***(2019) 2 TN MAC 145 SC : 2019 (7) SCC 217***. It is also submitted that future prospects have not been added and loss of consortium also not properly awarded by the Tribunal. Hence, prays to enhance the award.

9. The learned counsel for the second respondent/Insurance Company submitted that even though, the claimants contended that the deceased was a driver, but no proof has been produced to show that he is a driver and considering the same, the Tribunal has properly fixed the notional income and there is a clear finding regarding notional income. Hence, prays to dismiss the appeal.

10. I have considered the rival submissions of both sides and also perused the records.



11. In this case, the claimants have not produced any evidence to support of their contention that the deceased was a driver and the claimants have not proved the income earned by the deceased. The claimants have not examined any witness who has engaged to drive goods van to speak about the income earned by the deceased. The driving license of the deceased was also not marked to show whether he was holding a valid license to drive the goods vehicle. This Court is of the view that, eventhough the deceased died in while driving the van, without any evidence, he could not be termed that he was earning income by doing the avocation of driver.

12. The Tribunal after considering the evidence placed on record notionally fixed the income of the deceased as Rs.6,000/- per month and after deducting $1/3^{\text{rd}}$ of the amount as personal expenses and loss of dependency is arrived at Rs.48,000/- $[6000 \times 12 \times 2/3]$. The age of the deceased is 30 at the time of accident, hence the Tribunal has properly applied multiplier '17'. The accident in this case was held on 09.01.2012, in the absence of any proof to show that the deceased is a driver, fixing of Rs.6,000/- per month as notional income of the deceased would be proper and the Judgment of the Hon'ble Apex Court in ***Parminder Singh vs New India Assurance Co. Ltd., and Others [(2019) 2 TNMAC 145 SC : 2019 (7)***

SCC 217] case cited above is not applicable to this case.



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13. The Tribunal has not awarded future prospects of the deceased and hence this Court is inclined to grant 40% Future prospects as per the Judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others [2017 (2) TNMAC 609 (SC) : 2017 (16) SCC 680]***. Accordingly, this Court granted a sum of Rs.11,42,400/- [6000 + 2400 (40% of 6000) x 12 x 17 x 2/3] under the head loss of dependency. The Tribunal has awarded a sum of Rs.25,000 as loss of consortium for the first petitioner and for love and affection Rs.30,000/- is awarded for all the three dependents and this Court is of the view that both the heads are modified i.e., loss of consortium a sum of Rs.40,000/- granted to each claimants (3 persons) [40,000 x 3 = 1,20,000/-]. Accordingly, a sum of Rs.1,20,000/- is granted under the head Loss of Consortium. The Tribunal has awarded a sum of Rs.15,000/- for Funeral Expenses and Transportation and the same is hereby modified to Rs.40,000/- for the head Funeral Expenses and Loss of Estate. Thus the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of Dependency	Rs.8,16,000/-	Rs.11,42,400/-	Enhanced
2.	Loss of Consortium to the	Rs.25,000/-		



	1 st petitioner / Loss of Consortium to each claimants		Rs.1,20,000/-	Enhanced
3.	For Transportation and Funeral Expenses / For Funeral Expenses and Loss of Estate	Rs.15,000/-	Rs.40,000/-	Enhanced
4.	For Love and Affection to 3 petitioners	Rs.30,000/-		Rejected
	Total	Rs.8,86,000/-	Rs.13,02,400/-	Enhanced by Rs.4,16,400/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.8,86,000/- is hereby enhanced to Rs.13,02,400/- [Rupees Thirteen Lakhs Two Thousand and Four Hundred only] together with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit. The second 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 any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.163 of 2012, on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Tiruvallur at Poonamallee. On such deposit, the first claimants permitted to withdraw her respective share of the award amount, now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any,



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already withdrawn. The share of the minor claimants 2 & 3 are directed to be deposited in any one of the Nationalized Banks, till the minor claimants attains majority. On such deposit, the 1st claimant, being the mother of the minor claimants is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

12.07.2023

ssi

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The III Additional District Judge,
Motor Accidents Claims Tribunal,
Tiruvallur at Poonamallee.

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

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