



C.M.A.No.2329 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.04.2023

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THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.2329 of 2019

1. Lakshmi

2. Alagarasan

..Appellants

Vs

1.S.Chitheswari

2.Royal Sundaram Alliance Insurance Company Ltd.,

No.8/H1, Mangalam Building,

Four Roads, Salem -636009.

..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in MCOP.No.882 of 2011 dated 04.09.2015 on the file of Motor Accident Claims Tribunal and Special District Judge, Salem.

For Appellants :Mr.SP.Yuaraj

For Respondents :Mr Srinivasa Ramalingam for R2

JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 04.09.2015 passed by



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the Motor Accident Claims Tribunal and Special District Judge, Salem in MCOP.No.882 of 2011.

2. On 02.04.2011 at about 8.00 am,, the deceased was proceeding in his motor cycle bearing Regn.No.TN-30-AY-6720 from Nallagoundampatty to Muthunaickenpatty. When he was s proceeding after crossing Tholur bus stop at Pagalpatty to Muthunaickenpatty main road, a Mahendra Bolero Pick Up Van bearing Engine No.GHAIM77083 Chassis No.B1A11013 came in the opposite direction at a high speed. The driver of the said vehicle drove the vehicle in a rash and negligent manner and dashed against the deceased due to which he fell down and sustained grievous injuries all over the body and died on the spot. Claiming that the deceased was a driver and was earning about Rs.15000/- per month and the driver of the van is solely responsible for the accident, the appellants / claimants have filed a claim petition before the Tribunal claiming a sum of Rs.20,00,000/-.



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3. The appellants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.

4. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

Heads	Award Amount (Rs.)
Loss of Income (after deduction 10% of income tax)	5,83,200/-
Loss of love and affection to appellants	20,000/-
Funeral Expenses	25,000/-
Total	6,28,200/-

5. Before the Tribunal, the Appellants/claimants examined three witnesses as PW1 to PW3 and filed seventeen documents which were marked as Ex.P1 to Ex.P17 and material object as MO1. On the side of the Respondents, three witnesses were examined as RW1 to RW3 and marked four documents as Ex.R1 to Ex.R4.



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6. Heard the learned counsel for the appellants and learned counsel for the second respondent and perused the materials available on record.

7. The learned counsel appearing for the Appellants/Claimants submitted that the Judgment and decree of the lower court is contrary to law, facts, evidence and probabilities of the case. Though the deceased was earning more than Rs.500/- per month, the Tribunal has taken only Rs.6000/- per month as his monthly income. It has failed to note that the age of he deceased was 21 years at the time of the accident and he is the sole bread winner of the family but erroneously, the Tribunal has not awarded future prospects. It has deducted 10% for tax which the Apex Court in its judgment reported in 2013 (7) SCC 476 says that the tax should be deducted only for the taxable income for that year but here it was not done so because the income is below the taxable income. It failed to consider the Saralavarma case which is reported in 2009 (2) TANMAC 1 before awarding compensation. There can be no exact, uniform rule for measuring the value of human life and the measure of damage cannot be arrived by precise mathematical calculation. It has overlooked the pain and



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sufferings caused before the death took place. It failed to note that the death is not instantaneous one, hence the pain and sufferings that the death caused to the family of victim should be taken note of by the trial court. The Tribunal, without appreciating the evidences properly, has awarded the total compensation of Rs.6,28,200/- and the said quantum is unreasonable. The amount awarded under various heads are very meagre. Hence, he prayed to enhance the compensation.

8. Per contra, the learned counsel appearing for the second respondent has submitted that the compensation claimed by the appellants is highly excessive and baseless. This second respondent is not liable to pay any compensation to the claimants. He further submitted that the Tribunal after analysing the evidences on record, has rightly awarded the compensation to the appellants/claimants and hence, the award passed by the Tribunal does not warrant any interference by this Court. Hence, he prays for dismissal of the appeal.

9. Considering the age and earning capacity of the deceased, the Tribunal fixed Rs.6000/-, per month, adopting the multiplier of 18, and after deducting 1/2 of the income towards personal expenses of



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the deceased, has arrived at a sum of Rs.6,28,200/-. The Tribunal has relied upon Ex.P1/FIR, Ex.P2/Post Mortem Report and Ex.P5/Driving license and taken the age of the deceased as 21 years. On perusal of records, it is seen that the Tribunal has not properly considered the evidences and the documents marked. Hence, some heads need re-visit for a reasonable award.

10. Taking note of the above submissions of the learned counsel for the appellants / claimants, age of the deceased, rise in the cost of living and also the facts and circumstances of the case, this Court is of the considered view that Rs.7000/- is to be taken as monthly income of the deceased. Since the age of the deceased was 21 years at the time of accident, the multiplier of 18 has to be taken for computing loss of income. Further, 40% is taken for future prospects and 50% towards personal expenses has to be deducted for calculating loss of income. If Rs.7000/- is taken as the monthly income of the deceased, after adding 40% towards future prospects and 50% of the amount is deducted towards personal expenses and the multiplier of 18 is adopted, the loss of income works out to Rs.10,58,400/- ($7000 + 40\% = 2800$; $7000 + 2800 - 9800 - 50\% = 4900$; 4900



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x 12 x 18 = 10,58,400/-.) Accordingly, the amount awarded by the Tribunal towards 'loss of income' stands modified to Rs. 10,58,400/-. The dependants of the deceased have lost their emotional support and hence it would be appropriate to enhance the award under the head of loss of love and affection to the claimants to Rs.40000/- each and thus arrived at Rs.80,000/- (40,000/- x 2). However, this court is of the considered opinion that the Tribunal has awarded Rs.25,000/- towards funeral expenses which is on higher side and hence the same needs re-visit. It would be appropriate to award a sum of Rs.15,000/- towards funeral expenses. On perusal of records, it is seen that no amount is awarded under the head of loss of estate for which they are entitled to. Hence, this court is inclined to grant a sum of Rs.15000/- towards loss of estate.

11. The details of the modified compensation are as under:

Heads	Amount awarded by the Tribunal (Rs.)	Award Amount by this Court (Rs.)
Loss of Income	5,83,200/-	10,58,400/-
Loss of love and affection to the appellants	20,000/-	80,000/- (40000 x 2)



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Heads	Amount awarded by the Tribunal (Rs.)	Award Amount by this Court (Rs.)
Funeral Expenses	25,000	15,000/-
Loss of Estate	----	15,000/-
Total	6,28,200/-	11,53,400/-

12. In the considered opinion of this court, the appellants/claimants are entitled to the total compensation amount of Rs.11,53,400/- without deduction towards income tax.

13. The Civil Miscellaneous Appeal is partly allowed. No costs.

14. The second respondent is directed to deposit the modified compensation as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank accounts of the appellants/claimants through RTGS within a period of two weeks thereafter. No costs.



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15. Since the compensation amount now awarded is Rs.11,53,400/-, it is made clear that the claimants have to pay the appropriate Court fee in order to receive the enhanced award amount.

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Index : Yes/No
Internet : Yes/No
gv

To

1. The Motor Accident Claims Tribunal /
and Special District Judge, Salem.
2. The Section Officer,
VR Section,
High Court, Madras.



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A.A.NAKKIRAN.,J.

gv

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