



C.M.A.No.858 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.858 of 2020

1.Grace

2.Ebinesan

3.Elizabeth Rani

4.Kirbanithi

5.Victor Selvaraj

6.Velankanni

7.Vinnarasi

... Appellants

Vs.

1.S.Krishnamoorthy

2.The New India Assurance Co., Ltd.,
Rep., by its Divisional Manager,
Motor Third Party Claims Cell,
No.69/70, Sheikpet Nadu Street,
Kancheepuram.

... Respondents



C.M.A.No.858 of 2020

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 10.02.2015 passed in M.C.O.P.No.97 of 2011 on the file of the Sub Judge, Motor Accidents Claims Tribunal, Madhurantakam.

For Appellants : M/s.S.S.Swaminathan

For first respondent : Ex-parte

For second Respondent : Mr.J.Chandran

JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimants for enhancement of compensation.

2. The claimants are the widow and the children of the deceased Gnanakkannu who died in a motor accident which occurred on 02.01.2011. The claimants filed the claim petition seeking a sum of Rs.20,00,000/- as compensation. According to the claimants, the deceased was working as a Mason and earning a sum of Rs. 350 per day and the deceased was 55 years old at the time of accident.

3. Both the respondents filed a counter denying all the averment made in the claim petition including negligence, quantum and liability.



C.M.A.No.858 of 2020

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4. Before the Claims Tribunal, the first claimant examined herself as P.W.1 and examined one Thanga Prakasam as P.W.2 and marked Exs.P1 to P8. On the side of the respondents, neither oral nor documentary evidence was adduced.

5. The Claims Tribunal, on assessment of the entire evidence on record, returned a finding of negligence against the first respondent's Driver and mulcted the liability to pay the compensation of Rs.3,82,000/- along with interest at the rate of 7.5% per annum, on the second respondent Insurance Company. Not satisfied with the compensation awarded by the Tribunal, the claimants have filed the present appeal.

6. The liability and negligence are not disputed in this appeal. The short question that arises for consideration is the quantum of compensation payable to the claimants.

7. The learned counsel for the appellants submitted that the deceased was working as a Mason and was earning a sum of Rs.350 per day and therefore, the notional income assessed at Rs.4,000/- by the



C.M.A.No.858 of 2020

Tribunal was very meagre. The learned counsel further submitted that the Tribunal had not awarded any amount towards loss of consortium to the sons and daughters of the deceased. Even the award under the heads of Funeral expenses and loss of estate at Rs.10,000/- and Rs.5,000/- was against the judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd., vs. Pranay's Sethi*** reported in 2017(2) TN MAC 609 (SC) in C.M.A.No.1190 of 2015.

8. On the other hand, the learned counsel for the second respondent submitted that the deceased was aged about 55 years and therefore, the assessment of income at Rs.4,000/- was reasonable and does not call for any interference by this Court. As regards the loss of filial consortium, loss of estate and funeral expenses, the learned counsel fairly submitted that the claimants were entitled to enhanced compensation under the said heads.

9. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent and perused the materials available on record.



C.M.A.No.858 of 2020

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10. Though there is no evidence to prove the income of the deceased, I am of the view that a sum of Rs.250/- per day can be taken as the income, as the deceased was working as a Mason, and aged 55 years. The accident occurred in the year 2011 and so considering the cost escalation, the monthly income of the deceased can be fixed at Rs.6,250/- per month. The age of the deceased was '55' years at the time of accident and the 'multiplier' for the age group of '55' is 11. In view of the same, the amount awarded by the Tribunal towards loss of dependency is arrived at Rs.6,05,088/- $[(Rs.6,250/- + (Rs.6,250/- \times 10\% = Rs.625/-) = Rs.6,875/- \times 1/3 (Rs.6,875/- - Rs.2,291/-) = Rs.4,584/- \times 12 \times 11]$, 10% of the income is added towards future prospects and 1/3rd amount is deducted towards the personal expenses of the deceased. The Tribunal ought to have awarded Rs.40,000/- each towards loss filial consortium to the children of the deceased, as laid down by the Hon'ble Supreme Court in the judgment, ***National Insurance Co. Ltd., vs. Pranay's Sethi*** reported in 2017(2) TN MAC 609 (SC) in C.M.A.No.1190 of 2015. Therefore, the claimants are entitled to a sum of Rs.2,80,000/- at Rs.40,000/- each towards loss of filial consortium. In the above judgment, the Hon'ble Supreme Court held that the amount towards loss



C.M.A.No.858 of 2020

of estate and funeral expenses should be assessed at Rs.15,000/- each.

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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
1.	Loss of dependency	3,52,000/-	6,05,088/-	Enhanced
2.	Loss of Estate	10,000/-	15,000/-	Enhanced
3.	Loss of love & affection with regard to 1 st appellant	10,000/-	-	Set aside
4.	Funeral Expenses	5,000/-	15,000/-	Enhanced
5.	Transportation	5,000/-	-	Set aside
6.	Loss of filial consortium Rs.40,000/- X 7	-	2,80,000/-	Granted
	Total	3,82,000/-	9,15,088/-	5,33,088/-

11. In all the appellants/claimants are entitled to a sum of Rs.9,15,088/- as enhanced compensation.

12. It is made clear that the appellants two to seven would be entitled Rs.40,000/- each towards loss of filial consortium and balance



C.M.A.No.858 of 2020

enhanced compensation shall be paid to the first appellant, who is the widow of the deceased along with accrued interest at the rate of 7.5%.

13. The second respondent/Insurance company is directed to deposit the enhanced compensation before the Tribunal within a period of six weeks from the date of receipt of copy of this order. The appellants are thereafter entitled to withdraw the above said amount by filing application as per due process of law.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

20.03.2023

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Index: Yes/No

Neutral Citation: Yes/No



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C.M.A.No.858 of 2020

N.MALA, J.

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To

1.The Sub Judge,
The Motor Accidents Claims Tribunal,
Madhurantakam.

2.The Section Officer,
V.R.Section,
High Court,
Madras.

C.M.A.No.858 of 2020

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