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C.M.A.No.4365 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.4365 of 2019

1.Subramani
2.Senbagavalli
3.Parameshwari
4.Parameshwaran

.. Appellants

Versus

1.Govindasamy @ Chinnarasu
2.M.Velusamy
3.K.Chandiraraj

4.Cholamandalam MS General Insurance Co.Ltd
2nd Floor, 60 A, Karuna Building
Mosuvanna Street, EVN Road
Erode

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the Motor Accidents Claims Tribunal (Subordinate Court), Perundurai made in M.C.O.P.No.17 of 2014 dated 23.09.2016.

For Appellant : M/s.M.Sudha

For Respondents : E.Rajadurai for R4
for M/s.M.B.Gopalan Associates



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JUDGMENT

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2.The manner of the accident, factum of the accident, rash and negligence on the part of the driver of the offending vehicle are not in dispute

3. On 19.07.2013, the deceased Saraswathi was hit by the driver of the offending vehicle at Pungampadi to Mettukadai Road, Sanarpalayam and an FIR came to be registered in Cr.No.136/2013 under Sections 279 & 337 of IPC.

4. The appellants are the claimants seeking to challenge the award passed by the Tribunal on the ground of quantum. The first respondent is the driver of the offending vehicle; the respondents 2 and 3 are the owner of the offending vehicle and the fourth respondent is the Insurance Company. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

5. During the trial before the Tribunal, the fourth claim petitioner was



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examined as PW1. Ex.P1 to P16 were marked. Ex.P1 is the FIR Copy, Ex.P8 is the Death Certificate of the deceased, Ex.P9 is the Legal Heirship Certificate of the deceased & Ex.P11 is the Discharge Summary. The Tribunal on consideration of both oral and documentary evidences came to conclusion that the accident has taken place due to the rash and negligent driving of the driver of the offending vehicle, accordingly, fixed the negligence liability both on the owners of the offending vehicle and the Appellant Insurance Company. Considering the age of the petitioner, i.e., 55 years, as per the Death Certificate, the Trial Court fixed the notional income as Rs.5,000/- per month. As the multiplier for 55 years of age is 11 as per Sarala Verma's case reported in **2009 2 TN MAC 1 (SC)**, it fixed the total loss of dependency to the claim petitioners as Rs.4,95,000/- by deducting $\frac{1}{4}$ from the notional income (i.e., $5000 \times \frac{3}{4} \times 12 \times 11$). Furthermore, the Trial Court granted funeral expenses as Rs.25,000/-, Bills at Rs.3,78,000/-, Rs.1,00,000 for love of affection to the claim petitioners and Rs.50,000 as consortium to the first claim petitioner, totalling to the tune of Rs.10,48,000/-.

6.The learned counsel for the claim petitioners submitted that the



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Tribunal did not considered in granting future prospects of the deceased as per the case reported in 2013 (1) TN MAC Page No.641 and monthly income was fixed to a meagre amount of Rs. 5000 which should be at least Rs.15,000/-. Hence, seeks this Court to enhance the award amount awarded by the Tribunal.

7. Heard M/s.M.Sudha, learned counsel for the appellants and Mr.E.Rajadurai, learned counsel for the fourth respondent Insurance Company and perused the materials placed on record.

8. Considering the facts and also taking note of the plea raised by the learned counsel for the appellants that the future prospects was not considered and also of the fact that at the time of accident, the deceased rode the two wheeler carelessly and met with the accident. Therefore, the carelessness of the deceased riding two wheeler on the date of accident, assumes significance.

9. In view of above, this Court is of the considered view that the income of the deceased should be fixed at Rs.7000 along with future prospects of 10% [(i.e., $7000+700=\text{Rs.}7,700/-$ (10%))] and the same is hereby enhanced; further,



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loss of love and affection to the claim petitioners are enhanced at Rs.1,20,000/- and the loss of estate is hereby granted at Rs.15,000/-. However, the funeral expenses is reduced at Rs.15,000 and similarly, consortium to the first claimant is reduced at Rs.40,000/-. Accordingly, the award amount is modified as below:

<i>Calculation</i>	<i>Rs.</i>
Loss of dependency to the claim petitioners (Rs.7700x12x11x3/4)	Rs.7,62,300/-
Funeral Expenses	Rs.15,000/-
Consortium to the first claim petitioner	Rs.40,000/-
Love and affection to the claim petitioners	Rs.1,20,000/-
Medical Expenditure	Rs.3,78,000/-
Loss of Estate	Rs.15,000/-
Total compensation is hereby fixed at	Rs.13,30,300/-

10. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed to the extent indicated above. Accordingly, the compensation awarded is enhanced from Rs.10,48,000/- to Rs.13,30,300/-. The rate of interest awarded by the Tribunal remains in tact. No Costs.

(ii) the Fourth Respondent/ Insurance Company is directed to deposit the enhanced award amount before the Tribunal, within a period of four weeks



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from the date of receipt of a copy of this order, less the amount, if any already deposited and recover the same from the owner and the driver of the offending vehicle/respondents 1 to 3.

(iii) On such deposit being made, the claimants are permitted to withdraw their share in the award amount with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the Claim Petitioners are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

06.06.2023

Internet : Yes/No
Speaking Order/Non-Speaking Order
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To

The Presiding Officer,
Motor Accidents Claims Tribunal
Subordinate Court
Perundurai

A.A.NAKKIRAN, J.



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