



C.M.A.No.1652 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1652 of 2019

1.Mariammal
2.Veerakannu

... Appellants

Vs.

1.A.Prabu
2.P.Subramaniam

3.The Manager,
Royalsundaram Alliance Insurance Company Ltd.,
4A IV Floor, Thirumalai Towers,
No.723, Avinashi Road,
Coimbatore – 641 018.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accidents Claims Tribunal Cum Subordinate Court at Perundurai in M.C.O.P.No.56 of 2011 dated 01.03.2017.

For Appellants : Mr.T.M.Karthikeyan
For Respondents : R1 and R2 – No Appearance
Mr.G.Vasudevan for R3

J U D G M E N T

This appeal has been filed by the appellants/ claimants



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challenging the judgment and decree passed in M.C.O.P.No.56 of 2011 dated 01.03.2017 on the file of the Motor Accidents Claims Tribunal Cum Subordinate Court at Perundurai.

2.The brief facts of the case is that on 18.07.2010 at about 5.00a.m., the deceased V.Kumar was travelling in a TATA ACE Van bearing Registration No.TN 42 B 3520 which was driven by the first respondent at NH 67 Trichy to Kovai East West Main road from East to West. The first respondent drove the vehicle in a rash and negligent manner and dashed on left side road parking lorry bearing Registration No.TN 46 C 2512 when the vehicle came near Kallimettupalayam Privu East side near Salai Thottam, due to which, the deceased sustained head injury and succumbed.

3.Thereafter, the parents of the deceased V.Kumar/ appellants/ claimants filed claim petition before the Motor Accidents Claims Tribunal, claiming a sum of Rs.15 Lakhs as compensation for the death of their son. After adjudication, the Tribunal awarded a sum of Rs.9,16,000/- as compensation along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit with proportionate costs and directed that the respondents 1 and 2 are



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liable to pay the compensation. Aggrieved by the same, the claimants have preferred this appeal seeking enhancement in compensation.

4.The learned counsel appearing for the appellants submitted that the deceased was employed as Milk Dairy Supervisor in A.S.M. Dairy at Koduvai owned by the second respondent. The deceased performed the duty of collecting milk from the Agriculturist in the van driven by the first respondent and to take measurement from the Agriculturists. Though the same was not elaborately mentioned in the claim petition, P.W.1 – Mother of the deceased in her deposition clearly deposed that her son was employed under the second respondent and his duty is to collect milk from the Agriculturist in the van driven by the first respondent. Even then, the Tribunal arrived at a conclusion that the deceased travelled as a gratuitous passenger and hence, the third respondent Insurance Company is not liable to pay compensation, which is not sustainable one.

5.The learned counsel appearing for the appellants further submitted that though P.W.3 – driver of the van in his deposition deposed that the deceased was earning a sum of Rs.10,000/- per month, the Tribunal fixed a sum of Rs.8,000/- per month as the salary



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of the deceased. Further, the Tribunal has also not awarded any amount towards future prospects. Hence, the appellants are entitled for enhanced compensation.

6.Per contra, the learned counsel appearing for the third respondent Insurance Company submitted that though the claimants filed claim petition before the Tribunal, the claim petition did not reveal that the deceased was employed under the second respondent. It was simply mentioned that the deceased was employed as Milk Dairy Supervisor in A.S.M. Dairy at Koduvai. However, the employment of the deceased was improved in the deposition of P.W.1, which is not sustainable one.

7.The learned counsel appearing for the third respondent Insurance Company submitted that the third respondent Insurance Company examined its employee as R.W.1 and also marked copy of the policy as Ex.R1. As per the policy, gratuitous passengers are not entitled to claim compensation. In support of his contentions, the learned counsel relied upon the decision of the Hon'ble Supreme Court reported in 2004 (2) TN MAC 387 (SC) [New India Assurance Co. Ltd., Vs. Asha Rani and others].



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

9.On 18.07.2010 at about 5.00 a.m., the deceased V.Kumar was travelling in a TATA ACE Van which was driven by the first respondent at NH 67 Trichy to Kovai East West Main road from East to West in a rash and negligent manner and dashed on left side road parking lorry near Kallimettupalayam Privu East side near Salai Thottam, due to which, the deceased sustained head injury and succumbed.

10.The accident and the manner in which the accident took place are not in dispute. Admittedly, on the fateful day, the first respondent drove the vehicle and the deceased travelled as a Milk Dairy Supervisor in the vehicle owned by the second respondent who is running Dairy Farm in the name of A.S.M. Dairy. Though in the claim petition, the claimants have not mentioned that the deceased was employed under the second respondent, in column nos.4 and 5 relating to the occupation of the person dead and address of the employer of the deceased, the claimants have specifically stated that as Milk Dairy



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Supervisor and A.S.M. Dairy at Koduvai, Tiruppur District. The said fact was also admitted by P.W.3 – driver of the vehicle owned by the second respondent and employee of the second respondent. Further, the third respondent Insurance Company has not examined any independent witness except its official.

11.It is true that as per the policy, un-authorised passengers and gratuitous passengers are not entitled to claim compensation, however, in the present case, the deceased was employed under the second respondent whose vehicle was insured with the third respondent. Hence, the Tribunal not fastening the liability on the third respondent is not sustainable one. The third respondent as an insurer of the vehicle involved in the accident is liable to pay the compensation.

12.Insofar as the quantum of compensation is concerned, the tribunal after elaborately discussing the factual aspects awarded a sum of Rs.5,88,000/- for loss of income, Rs.5,000/- for funeral expenses, Rs.10,000/- for transportation charges, Rs.50,000/- each for love and affection and arrived at a total compensation of Rs.7,03,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date



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of deposit.

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13.The deceased was aged 26 years at the time of death. Hence, the correct multiplier to be adopted is 17. This Court is of the opinion that the Tribunal has rightly fixed the monthly salary as Rs.8,000/- and has rightly deducted 1/2 towards personal expenses. Hence, the amount awarded for loss of income in the opinion of this Court is just and reasonable. This Court is of the opinion that some amount has to be awarded for future prospects and for loss of estate. Accordingly, this Court awards 40% of actual loss of income for future prospects, which comes to Rs.3,26,400/- [40% of Rs.8,16,000/- = Rs.3,26,400/-] and a sum of Rs.15,000/- for loss of estate. The amount awarded under the head funeral expenses, in the opinion of this Court is on higher side and hence this Court is inclined to reduce the amount awarded under the said head. Accordingly, the amount awarded for funeral expenses is reduced to Rs.15,000/- from Rs.25,000/-. However, the amount awarded for loss of love and affection, in the opinion of this Court is low and this Court is inclined to enhance the amount awarded under the said head. Accordingly, the amount awarded for loss of love and affection is enhanced to Rs.80,000/- [Rs.40,000/- each] from Rs.75,000/-.



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14. 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.8,16,000/-	Rs.8,16,000/-
2.	Funeral Expenses	Rs. 25,000/-	Rs. 15,000/-
3.	Loss of love and affection	Rs. 75,000/-	Rs. 80,000/-
4.	Future prospects	---	Rs.3,26,400/-
5.	Loss of estate	---	Rs. 15,000/-
	Total	Rs.9,16,000/-	Rs.12,52,400/-

15. The claimants are entitled to total compensation of Rs.12,52,400/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

16. The civil miscellaneous appeal is allowed on the above terms. The judgment and decree passed in M.C.O.P.No.56 of 2011 dated 01.03.2017 by the Motor Accidents Claims Tribunal Cum Subordinate Court at Perundurai, is modified to the above extent.

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



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within a period of eight weeks from the date of receipt of a copy of this judgment. 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 Cum Subordinate Court at Perundurai, shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellants/ claimants. The respondents 1 and 2 are permitted to withdraw the amount, if any, already deposited by them.

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

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

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1.The Motor Accidents Claims Tribunal Cum Subordinate Court at Perundurai.

M.DHANDAPANI,J.
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