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C.M.A.No.2435 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.2435 of 2018

1. Andi @ Andiappan (died)
2. Meenakshi
3. Karthikeyan

... Appellants

v.

1. T.Palanisamy
2. The National Insurance Co., Ltd.,
37/2E, Salem Main Road,
Mettur Dam.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to enhance the award against the judgment and decree dated 26.7.2017 passed in M.C.O.P.No.1228 of 2004 on the file of the Principal District Judge and Motor Accidents Claims Tribunal, Namakkal.

For Appellants : Mr.S.Sankar
For Respondents : No appearance
for R1
Ms.N.B.Surekha
for R2



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J U D G M E N T

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This appeal has been filed by the claimants as against the Award dated 26.07.2017 passed by the learned Principal District Judge and Motor Accidents Claims Tribunal, Namakkal in M.C.O.P.No.1228 of 2004

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The first petitioner is the injured claimant and during the pendency of the claim petition, he died. The second petitioner is the wife and the third petitioner is the son of the first petitioner. The first respondent is the owner and the second respondent is the insurer of the offending vehicle.

4. The case of the claimants before the Tribunal is that on 12.06.2004, the first petitioner was travelling in a Tempo Van bearing Registration No.TN-36/B-3222 from Salem to Attur in the capacity of owner of the goods. When the Tempo Van was proceeding near Pethanaickenpalayam Village, the driver of the said Tempo Van drove the



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vehicle in a rash and negligent manner and collided with an unknown lorry, which came in the opposite direction. Due to the said impact, the first petitioner sustained grievous injuries all over his body including a bone fracture on his right leg knee and his left hand fingers have become permanently disabled. The first petitioner took first aid treatment in the Government Hospital, Salem and then he was admitted in the Aravinth Hospital, Namakkal for further treatment. Hence, the claimants made a claim for a sum of Rs.6,00,000/- as compensation.

5. The second respondent/Insurance Company filed their counter affidavit denying the averments and allegations made in the claim petition and prayed for dismissal of the claim petition.

6. In order to prove the claim before the Tribunal, on the side of the claimants P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P9 were marked. On the side of the respondents, R.W.1 to R.W.4 were examined and Ex.R1 to Ex.R4 were marked.

7. The Tribunal, after analysing the entire evidence, came to the



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conclusion that the accident had occurred due to the rash and negligent driving of the driver of the first respondent's Tempo Van. The first respondent being the owner of the said vehicle, which was insured with the second respondent/Insurance Company, are liable to pay compensation to the claimants. By coming to such conclusion, the Tribunal passed an Award for a sum of Rs.5,28,900/- as compensation and directed the second respondent-Insurance Company to pay the said amount at the first instance and thereafter, recover the same from the owner of the offending vehicle. Challenging the same, the claimants have filed the present Civil Miscellaneous Appeal seeking enhancement of compensation amount.

8. The learned counsel for the appellants submitted that the first appellant (since died) was a cattle broker. On the date of accident, the first appellant was travelling in the Tempo van as owner of the goods. Due to the rash and negligent driving of the driver of the said Tempo Van, the accident had happened and he sustained grievous injuries. The offending vehicle was insured with the second respondent and hence, the owner and insurer are liable to pay compensation. Further, the employment and earning capacity



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of the first appellant were proved before the Tribunal. The First Information Report itself shows that at the time accident, the first appellant travelled along with the cattle for his business purpose, however, the Tribunal failed to appreciate the same and fixed the notional income at Rs.3,500/-, which is very low in proportion to the avocation of the first appellant. Further, the Tribunal applied multiplier method and awarded the compensation under various heads as per the guidelines of the Supreme Court in various decisions on the subject. Therefore, it is just, equitable and necessary to enhance the amount awarded by the Tribunal under various heads.

9. The learned counsel for the second respondent/Insurance Company has submitted that at the time of accident, the first appellant travelled along with the cattle in the Tempo Van as a gratuitous passenger. The Tribunal has rightly considered that the owner of the Tempo Van had violated the policy conditions, and therefore, directed the second respondent



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to pay compensation at the first instance and thereafter, recover the same from the owner of the Tempo Van.

10. Heard the learned counsel for the appellants and the learned counsel for the second respondent and also perused the records.

11. Despite service of notice, the first respondent has not chosen to enter appearance either through a counsel or in person.

12. In the case on hand, neither the owner of the vehicle, nor the Insurance Company have filed any appeal challenging the liability, therefore, as an Appellate Court, this Court cannot traverse beyond the scope of appeal and therefore, this Court does not interfere with the liability fixed by the Tribunal.

13. This Court, as the first appellate Court and being the final fact finding Court, has to re-appreciate the entire evidence and give independent finding and also to see as to whether the Tribunal has rightly



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appreciated the evidence and awarded 'just' compensation or not, or it requires to be enhanced.

14. On a perusal of the records shows that though in the claim petition, the claimants have stated that the first claimant was earning a sum of Rs.4,500/- per month and he was a cattle broker, except the oral evidence of the claimants, there is no other independent evidence let into prove that the first claimant was doing cattle business, and earning Rs.4,500/- per month.

15. It is to be noted that the Motor Vehicle Act is a beneficial legislation for accident victims irrespective of the avocation of the claimants. However, considering the materials available on record, it is seen that the claimants have not proved the avocation and income of the deceased/first claimant. However, by taking generous and sympathetic view, the Tribunal has rightly fixed Rs.3,500/- per month as the notional income of the first claimant, even without any specific evidence. Since the first claimant was aged about 52 years at the time of accident, considering the age, the Tribunal applied proper multiplier and awarded the compensation under



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various heads. The break-up details of the amounts awarded by the Tribunal

under various heads are as follows:

<i>S. No.</i>	<i>Compensation awarded by the Tribunal under the heads</i>	<i>Amount in Rs.</i>
1.	Loss of Love and Affection	40,000
2.	Funeral Expenses	7,000
3.	Loss of Income	3,08,000
4.	Transportation	5,000
5.	Loss of Consortium	20,000
6.	Medical Expenses	1,48,900
	Total	5,28,900

18. This Court, being the first appellate Court and the final Court of fact finding and while considering the entire materials available on record independently, does not find any ground to enhance the compensation awarded by the Tribunal. Since the avocation of the first appellant was not proved and the income of the first appellant was also not proved, there is no reason to differ from the view taken by the Tribunal in fixing the notional income at Rs.3,500/- per month of the first appellant. While considering the materials and the age of the first appellant and the number of dependants in the family, this Court finds that the impugned



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Award passed by the Tribunal by granting compensation is just and fair and

this Court does not find any perversity in appreciation of the evidence.

Therefore, there is no reason and the ground to enhance the compensation.

Unless this Court finds any perversity in appreciation of the evidence by the Tribunal or the compensation awarded is not 'just', this Court as the appellate Court, will not interfere with the impugned Award passed by the Tribunal.

19. There is no merit in the present appeal, which is accordingly dismissed and hence, the impugned Award passed by the Tribunal is confirmed. There shall be no order as to costs in the present appeal.

20. The second respondent/Insurance Company is directed to deposit the compensation as awarded by the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any already deposited by them before the Tribunal. On such deposit, the Tribunal is directed to credit the compensation to the Bank



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Account of the claimants, by following the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016 (reported in 2016

(2) LW 561 - The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). The claimants are permitted to withdraw the amount of compensation in the ratio mentioned by the Tribunal together with interest and costs. Thereafter, the second respondent/Insurance Company shall recover the same from the owner of the vehicle-the first respondent herein.

28.07.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1.The Principal District Judge and
Motor Accidents Claims Tribunal,
Namakkal.

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



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P.VELMURUGAN, J.

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