



C.M.A.No.1555 of 2019

IN THE HIGH COURT OF JUDICATURE OF MADRAS

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DATED : 20.02.2023

CORAM :

THE HONOURABLE Mr. JUSTICE A.A.NAKKIRAN

C.M.A.No.1555 of 2019

1.G.Purushothaman

2.A.Brindha

3.N.Krithiga

... Appellants/Petitioners

Vs.

1.S.Suresh

2.R.Iyyappan

3.The Branch Manager,
The New India Assurance Company,
Ooty Divisional Office, II Floor,
Moosa Said Complex,
Commercial Road,
Ooty,

The Nilgiris District.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 24.07.2014 in M.C.O.P.No.474 of 2014 on the file of the learned Special District Judge, Motor Accidents Claims Tribunal, Erode.



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For Appellants : Mr.R.Nalliyappan

For Respondents : Mr.M.Krishnamoorthy for R3

R1 - died

R2 - Served

JUDGMENT

The appellants have filed the above appeal aggrieved by the very meagre compensation that has been granted by the learned Special District Judge, Motor Accidents Claims Tribunal, Erode, in M.C.O.P.No.474 of 2014 dated 24.07.2014.

2.The claimants are the husband and daughters of the deceased Saraswathi. It is the case of the claimants that on 07.05.2014 about 11.00 a.m., the deceased Saraswathi and her grandson were travelling as pillion rider in a motor cycle bearing Registration No.TN 38 AR 6480 which was riding by her husband, the 1st petitioner, on Mettupalayam to Kovai Road, from North to South direction, in a slow speed, a lorry bearing Registration



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No.TN 72W 2946 came from the same direction, driven by the 1st

respondent in a rash and negligent manner, without adhering the traffic rules, and thereby hit from behind the deceased motor cycle.

Consequent to that, the 1st petitioner and his grandson fell down on the left side of the road and the deceased fell down on the right side of the road. Soon after that, the left front rear wheel of the lorry ran over the deceased. Due to which, the deceased sustained grievous injuries. Immediately, the deceased was taken to the Government Hospital, Mettupalayam, but she succumbed to the injuries. The accident was occurred only due to the rash and negligent driving of the 1st respondent and he is sole responsible for the same. At the time of death, the deceased was aged 54 years and was doing Tailoring work at the garments and earning a monthly income of Rs.12,000/-. The 2nd respondent as the owner of the vehicle and the 3rd respondent as the insurer of the vehicle, they are liable to pay a sum of Rs.10,00,000/- as compensation for the death of the deceased Saraswathi.



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3.The 1st and 2nd respondents remained absent and were set *ex parte*. The 3rd respondent Insurance Company had filed a counter statement disputing the manner of the accident and also, the 1st respondent did not possess a valid driving license to drive the lorry. The petitioners are not depending the deceased. The 2nd and the 3rd petitioners are married and living separately. The deceased is a house wife and there is no loss of income to the petitioners. The compensation amount claimed is excessive. The rate of interest claimed is also very high.

4.The Tribunal after considering the evidence on record came to a conclusion that the accident was occurred due to rash and negligent driving of the 1st respondent. Ultimately, the Tribunal has awarded a sum of Rs.5,20,760/- towards compensation with interest @ 7.5% per annum from the date of petition till the date of realisation to the claimants. Aggrieved by the very meagre



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compensation that has been granted by the Tribunal, the claimants are before this Court.

5.The learned counsel appearing for the appellants/claimants would submit that the Tribunal has erred in fixing the income of just Rs.4,800/- totally overlooking the fact that the deceased who was working as a Supervisor and also doing Tailoring work F-Cube Apparels and earned a sum of Rs.12,000/- per month. He would submit that the Tribunal has granted compensation under various heads are very low and therefore, the Award has to be enhanced.

6.Per contra, the learned counsel appearing for the 3rd respondent would submit that this is a very reasonable award and does not warrant a reconsideration.



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7. Heard the learned counsel appearing on either side and perused the papers.

8. Admittedly, the deceased was working as a Supervisor and also doing Tailoring work. As per the decision of the Hon'ble Supreme Court in **Neeta, W/o. Kallappa Kadolkar and others v. Divisional Manager, MSRTC, Kolhapur [2015 (1) TN MAC 161 (SC)]**, the notional income can be enhanced to a sum of Rs.8,000/- per month to which future prospects of 15% is to be added. Therefore, the monthly income would come to Rs.9,200/-. The annual income would work out to a sum of Rs.1,10,400/- ($\text{Rs.9,200/-} \times 12 = \text{Rs.1,10,400/-}$). After deducting $1/3^{\text{rd}}$ amount towards his personal expenses, the annual contribution to the family would be a sum of Rs.73,600/-. Considering his age, the appropriate multiplier to be adopted is 11. Therefore, the loss of



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dependency to the family would be a sum of Rs.8,09,600/-

(Rs.73,600/- x 11 =Rs.8,09,600/-). The appellants 2 and

3/claimants 2 and 3 are entitled to a sum of Rs.20,000/- each

towards loss of love and affection. Therefore, a sum of Rs.40,000/-

is granted under the head of loss of love and affection to the

daughters. The Tribunal has also granted a sum of Rs.10,000/-

towards loss of consortium which has to be enhanced to a sum of

Rs.40,000/-. Therefore, the amount under the head of loss of

consortium is enhanced to a sum of Rs.40,000/-. A sum of

Rs.5,000/- granted under the head of transportation is enhanced to

a sum of Rs.10,000/-. Rs.15,000/- is granted under the head of

funeral expenses as against a sum of Rs.10,000/- already awarded.

A sum of Rs.5,000/- granted under the head of loss of estate is

enhanced to a sum of Rs.15,000/-. The enhanced compensation

would be a sum of Rs.9,29,600/-. Therefore, taking into

consideration the above aspects, the modified amount is as

follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	Rs.4,85,760/-	Rs.8,09,600/-	Enhanced
2.	Loss of consortium	Rs.10,000/-	Rs.40,000/-	Enhanced
3.	Loss of love and affection to the two children (Rs.20,000/- x 2)	-	40,000/-	Enhanced
4.	Funeral expenses	Rs.10,000/-	Rs.15,000/-	Enhanced
5.	Transportation	Rs.5,000/-	Rs.10,000/-	Enhanced
	Loss of estate	Rs.10,000/-	Rs.15,000/-	Enhanced
	TOTAL	Rs.5,20,760/-	Rs.9,29,600/-	
		-		

9. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The 3rd respondent/Insurance Company is directed to deposit the entire compensation amount of Rs.9,29,600/- with interest @7.5% per annum, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.No.474 of 2014 on the file of the learned Special District



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Judge, Motor Accidents Claims Tribunal, Erode, within a period of six weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit, the claimants 1 to 3 are permitted to withdraw the entire award amount with proportionate accrued interest and costs as apportioned by the Tribunal, by making necessary applications.

The claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimants. No costs.

20.02.2023

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps



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To
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The Special District Judge,
Motor Accidents Claims Tribunal,
Erode.



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A.A.NAKKIRAN, J.

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