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CMA.No.364 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.04.2023

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.364 of 2019

1.Subiramani

2.Minor Bharath

(Minor rep by father Subiramani)

3.Palaniyammal

...Appellants

Vs

1.P.Karthik

2.Karthik Textiles

D.No.2A, Thirumalai Nagar, 2 street,

P.N.Road,

Tiruppur 641 602.

3.The New India Assurance Company Ltd.,

Divisional Office, Amman Complex,

Mettur Road, Erode 638 011.

..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in MCOP.No.52 of 2017 dated 02.10.2018 on the file of Motor Accident Claims Tribunal (Special District Judge) Erode.

For Appellants : Mr.Sundaravadhanam

For Respondents : Mrs.RSreevidhya for R3

J U D G M E N T

This appeal has been filed by the appellants/claimants seeking enhancement of compensation under the impugned award dated 02.10.2018



CMA.No.364 of 2019

passed by the Motor Accident Claims Tribunal, (Special District Judge)

Erode, in MCOP.No. 52 of 2017.

2. On 02.11.2016 at 9.30 a.m., the deceased Manikandan was riding his bike bearing Regn.No.TN-36-Q-6692 on the Salem-Coimbatore NH 47 from West to East with a pillion rider namely Sudhakar. While the deceased was riding the bike adjoining the centre median in order to take "U" turn, the first respondent being driver of the car bearing Regn.No.TN-39- BU-1122, in a rash and negligent manner dashed against the bike on its back. Due to the said impact, the rider and the pillion rider were thrown out of the bike and they sustained grievous injuries. Immediately, both of them were taken to Revathi Hospital, Tiruppur and later as an in-patient on 02.11.2016 to the Royal Care Hospital, Coimbatore. In spite of the treatment, he succumbed to his injuries on 07.11.2016. Claiming that the deceased was a Manager in P.M.S.Bore Well, earning Rs.20,000/- per month, the appellants/claimants have filed a claim petition claiming a sum of Rs. 20,00,000/-. The Tribunal adjudicated the issues with reference to the documents and evidences. The Insurance Company has defended their case. The Tribunal has awarded a



CMA.No.364 of 2019

total compensation of Rs.13,88,000/-

WEB COPY

3. The appellants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.

4. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

Heads	Award Amount (Rs.)
Loss of income	10,58,000/-
Love and affection for the petitioners	25,000/-
Funeral Expenses	25,000/-
Transport Expenses	11,000/-
Medical Expenses	2,69,000/-
Total	13,88,000/-

5. Before the Tribunal, the Appellants/claimants examined four witnesses as PW1 to PW4 and filed seventeen documents which were



CMA.No.364 of 2019

marked as Ex.P1 to Ex.P17. On the side of the third respondent, one witness was examined as RW1. However, no document was marked.

6. Heard the learned counsel for the appellants and learned counsel for the third respondent and perused the materials available on record.

7. The learned counsel appearing for the Appellants/Claimants submitted that the award of the Tribunal is very meager and it has not been fixed as per the law laid down by this court. He further submitted that the Tribunal came to the conclusion that the accident had happened only due to the rash and negligent driving of the first respondent and when there is no rebuttal evidence on the side of the 3rd respondent, who has not examined any independent witness except the 1st respondent in respect of the negligence of the deceased ought to have awarded the entire compensation. It ought to have awarded atleast Rs.20,000/- as monthly income based on Ex.P16 /salary certificate of the deceased filed by the appellants to prove the income by following the trite proposition of law as laid down by this court in *IFFCO TOKIO General Insurance Company Limited Vs. Balasubramaniam*. It ought to have considered that the loss of dependency



CMA.No.364 of 2019

of petitioners 1 to 3 due to the death of their bread winner will be more and have awarded a higher amount. It overlooked that the death is not instantaneous one and hence the pain and sufferings mental agony that the death caused to the family of the victim should be carefully taken note by the courts while awarding compensation in fatal accident cases. It grossly failed in not awarding any compensation towards damages caused to the clothes and articles of the deceased. The other reasons given by the Tribunal for awarding meagre amount as compensation is unsustainable in law. The Tribunal, without appreciating the evidences properly, has awarded the total compensation of Rs.13,88,000/- and the said quantum is unreasonable. Hence, he prayed to enhance the compensation.

8. Per contra, the learned counsel appearing for the third respondent submitted that the compensation claimed by the appellants is highly excessive and baseless. He further submitted that the Tribunal after analysing the evidences on record, has rightly awarded the compensation to the appellants/claimants and hence, the award passed by the Tribunal does



CMA.No.364 of 2019

not warrant any interference by this Court. Hence, he prays for dismissal of the appeal.

9. The Tribunal has relied upon the Ex.P1/FIR and Ex.P5/post mortem report of the deceased which reveals that the age of the deceased was 23 years and hence, the Tribunal has taken the age of the deceased as 23 years. Considering the age and earning capacity of the deceased, the Tribunal fixed the monthly income of the deceased at Rs.20,000/- per month, adding 40% of the income towards future prospects, deducting 1/2 of the income towards personal expenses of the deceased, adopting the multiplier of '18' (7000 + 40%-2800; 7000 + 2800-9800; 9800-4900 (1/2) x 12 = 58800; 58800 x 18 10,58,400/- and rounding it off, the Tribunal has arrived at a sum of Rs.10,58,000/- towards loss of income.

10. On perusal of records, it is seen that the Tribunal has not considered the evidences properly and the documents marked. Considering the age and avocation of the deceased, this Court is inclined to fix Rs.13,000/- as monthly income of the deceased. Since the age of the deceased was 23 years at the time of accident, the Tribunal has rightly



CMA.No.364 of 2019

adopted multiplier 18 for calculating loss of income. Further, considering the age and earning capacity of the deceased, 40% should be added towards future prospectus and 1/2 has to be deducted towards personal expenses for calculating pecuniary loss of income. If Rs.13000/- is taken as the monthly income of the deceased, after adding 40% towards future prospectus of the deceased and 1/2 of the amount is deducted towards personal expenses and the multiplier of 18 is adopted, the loss of income works out to Rs.19,65,600/-, $(13000 + 40\% = 5200)$, $(13000 + 5200 = 18200 \times 1/2 = 9100; 9100 \times 12 \times 18 = \text{Rs.}19,65,600/-)$. Accordingly, the amount awarded by the Tribunal towards 'loss of income' stands enhanced to Rs.19,65,600/-. Similarly, as per the Pranay Sethi case, it would be appropriate to enhance the award under the head of loss of love and affection to the appellants 1 to 3 to Rs.40,000/- each which would come to Rs.1,20,000/-. On perusal of records, it is seen that no amount is awarded under the head of loss of estate for which they are entitled to. Hence, this court is inclined to grant a sum of Rs.15,000/- towards loss of estate.

11. Insofar as the assessment of award under the heads of medical expenses of Rs.2,69,000/- and Transportation of Rs.11,000/- are concerned,



CMA.No.364 of 2019

the amount awarded by the Tribunal are a correct assessment and thus they do not call for any interference of this court. However, the amount awarded under the head of funeral expenses of Rs.25000/- is on higher side, and hence, this court is inclined to modify the same at Rs.15,000/-.

12. The details of the enhanced compensation are as under:

Heads	Award Amount (Rs.)
Loss of Income	19,65,600/-
Loss of love & Affection to the appellants 1 to 3 (Rs.40000/- each)	25,000/-
Loss of Estate	15,000/-
Medical Expenses	2,69,000/-
Funeral Expenses	15,000/-
Transport Expenses	11,000/-
Total	23,95,600/-

13. Thus, the appellants/claimants are entitled to the enhanced compensation of **Rs.23,95,600/-**. It is made clear that for the enhanced



CMA.No.364 of 2019

amount of **Rs.23,95,600/-**, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

14.The Civil Miscellaneous Appeal is partly allowed. No costs.

15. The third respondent/Insurance Company is directed to deposit the enhanced compensation, as ordered above, less the amount if any already deposited, to the credit of MCOP.No.52 of 2017, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal, in the same ratio as awarded by it, is directed to transfer the respective shares to the appellants 1 and 3, along with accrued interest to the bank account of the appellants 1 and 3 through RTGS within a period of two weeks thereafter. On such transfer, the appellants 1 and 3 are entitled to withdraw the same.

16. Insofar as the share of the award amount of minor 2nd appellant is concerned, it shall be deposited in any one of the Nationalised Banks till he



CMA.No.364 of 2019

attains majority and his guardian is entitled to get interest from the deposited amount of the minor once in three months.

17. Since the compensation amount now awarded is **Rs.23,95,600/-**, it is made clear that the claimants have to pay the appropriate Court fee in order to receive the enhanced award amount.

21.04.2023

Index : Yes/No
Internet : Yes/No
gv

To

1. The Motor Accident Claims Tribunal
(Special District Judge) Erode.
2. The Section Officer,
VR Section, High Court, Madras.

A.A.NAKKIRAN.,J.



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CMA.No.364 of 2019

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C.M.A.No.364 of 2019

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