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CMA.No.4139 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.04.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.4139 of 2019

1.Sasikala
2.Sasikumari ...Appellants

Vs

1.G.Shifa
2.Bharati General Insurance Co, Ltd.,
2nd Floor Metro Plaza
162, Anna Salai
Chennai 600 002. ..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.209 of 2015 dated 21.11.2016 on the file of Motor Accident Claims Tribunal-cum-Special District Judge, Villupuram.

For Appellants : Ms.M.Selvam

For Respondents : Mr.S.Arunkumar for R2

J U D G M E N T

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 21.11.2016



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passed by the Motor Accident Claims Tribunal -cum-Special District Judge,
Villupuram. in MCOP.No.209 of 2015.

2. On 21.10.2014 at about 6.00 a.m., while the deceased was on the way to her daughter's house on the left side of Chennai to Thiruchy bye-pass road near Janakipuram bus stop standing there for crossing the road from east to west, the first respondent's vehicle bearing Regn.No.TN-10-Y-4998, driven by its driver, in a rash and negligent manner, dashed against the deceased, due to which, the deceased was thrown away and thereby sustained severe fatal injuries and died on the spot. Claiming that the deceased was a milk vendor and was earning about Rs.15,000/- per month and the driver of the car is solely responsible for the accident, the appellants / claimants have filed a claim petition before the Tribunal claiming a sum of Rs.10,00,000/- .

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



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

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of Income	2,43,000/-
Loss of love and affection to appellants	20,000/-
Funeral Expenses	20,000/-
Total	2,83,000/-

After deducting 20% of contributory negligence on the side of the deceased, total compensation works out to **Rs.2,26,400/-** (2,83,000 – 56,600/-)

5. Before the Tribunal, the Appellants/claimants examined two witnesses as PW1 and PW2 and filed eight documents which were marked as Ex.P1 to Ex.P8. On the side of the Respondents, neither witness was examined nor document filed.



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

7. The learned counsel appearing for the Appellants/Claimants submitted that the Tribunal has erroneously fixed Rs.4500/- per month as income of the deceased. It has failed to consider the ratio propounded by this Court in 2009 (1) TNMAC 249 DB and 2009 (1) TNMAC 556 and 2017 (2) TNMAC 609. It has erred in fixing negligence on the part of the deceased as 20% without considering the proper evidence. It has erred in deducting 1/3rd instead of 50%. towards personal expenses. It has not awarded any amount under the heads of transport expenses, love and affection and loss of estate. The Tribunal, without appreciating the evidences properly, has awarded the total compensation of Rs.2,26,400/- and the said quantum is unreasonable. It has erred in awarding Rs.20,000/- towards loss of love and affection to the appellants and Rs.20,000/- towards funeral expenses and the same are very meagre. Hence, he prayed to enhance the compensation.



8. Per contra, the learned counsel appearing for the second respondent submitted that the compensation claimed by the appellants is highly excessive and baseless. This respondent is not liable to pay any compensation to the claimants. 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 not warrant any interference by this Court. Hence, he prays for dismissal of the appeal.

9. Considering the age and earning capacity of the deceased, the Tribunal fixed Rs.150/-, per day, adopting the multiplier of 9, calculated the pecuniary loss of income on account of the death of the deceased as Rs.4,86,000/-and after deducting deducting 1/2 of the income towards personal expenses of the deceased, has arrived at a sum of Rs.2,43,000/-. The Tribunal has relied upon Ex.P1/FIR, Ex.P3/copy of Insurance policy, Ex.P6/Post Mortem Report, the Tribunal has taken the age of the deceased as 59 years. On perusal of records, it is seen that the Tribunal has not properly considered the evidences and the documents marked. Hence, some heads need re-visit for a reasonable award.



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10. Taking note of the above submissions of the learned counsel for the appellants / claimants, age of the deceased, rise in the cost of living and also the facts and circumstances of the case, this Court is of the considered view that Rs.6500/- is to be taken as monthly income of the deceased. Since the age of the deceased was 59 years at the time of accident, the multiplier of 9 has to be taken for computing loss of income. Further, 10% is taken for future prospects and 50% towards personal expenses has to be deducted for calculating loss of income. If Rs.6500/- is taken as the monthly income of the deceased, after adding 10% towards future prospects and 50% of the amount is deducted towards personal expenses and the multiplier of 9 is adopted, the loss of income works out to Rs.3,86,100/- ($6500 + 650 = 7150$, $7150 \times 1/2 = 3575$, $3575 \times 12 \times 9 = 3,86,100/-$). Accordingly, the amount awarded by the Tribunal towards 'loss of income' stands modified to Rs.3,86,100/-. The dependants of the deceased have lost their emotional support, and hence it would be appropriate to enhance the award under the head of loss of love and affection to the claimants to Rs.80,000/- ($40,000/- \times 2$). However, this court is of the considered opinion that the Tribunal has awarded Rs.20,000/- towards funeral expenses which is on higher side and



hence the same needs re-visit. It would be appropriate to award a sum of Rs.15,000/- towards funeral expenses. 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.15000/- towards loss of estate.

11.The details of the modified compensation are as under:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Income	2,43,000/-	3,86,100/-
Loss of love and affection to the appellants	20,000/-	80,000/- (40000 x 2)
Funeral Expenses	20,000/-	15,000/-
Loss of Estate	-----	15,000/-
Total	2,83,000/-	4,96,100/-

Less 20% of the contributory negligence of the deceased

= Rs.4,96,100/- - 20% =Rs.99,220/-

Rs.4,96,100 – Rs.99,220/- = Rs.3,96,880/-

Thus, the appellants/claimants are entitled to the modified compensation of Rs.3,96,880/-



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12. After deducting 20% of contributory negligence on the side of the deceased, total compensation works out to Rs.3,96,880/-

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

14. The second respondent is directed to deposit the modified compensation as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter. No costs.

15. Since the compensation amount now awarded is Rs.3,96,880/-, it is made clear that the claimants have to pay the appropriate Court fee in order to receive the enhanced award amount.

Index : Yes/No

Internet : Yes/No

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To

1.The Motor Accident Claims Tribunal/
-cum-Special District Judge, Villupuram.

2.The Section Officer,
VR Section,
High Court, Madras.



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A.A.NAKKIRAN.,J.
gv

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