



C.M.A(MD)No.389 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

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and

C.M.P.(MD) No.3370 of 2021

1.The Director General of Police,
Kamarajar Salai,
Kailasapuram,
Mylapur, Chennai.

2.The Commissioner of Police,
No.1 South Sithirai Veethi,
Madurai District.

3.The Government of Tamilnadu,
Represented by Home Secretary,
Secretariat, Chennai.

... Appellants

.vs.

1.Latha

2.Logambal

3.Meera

4.Manikandan

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the decree and judgment passed in MCOP



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No.516 of 2018 dated 24.02.2020 on the file of the Motor Accident Claim Tribunal/District Court, Karur and allow this Civil Miscellaneous Appeal.

For Appellants : Mr.N.Muthuvijayan
Special Government Pleader

For Respondents : Mr.K.Sudalaiyandi

JUDGMENT

Challenging the award in M.C.O.P.No.516 of 2018, dated 24.02.2020 on the file of the Motor Accident Claim Tribunal/District Court, Karur, this appeal is filed.

2. The case of the respondents/claimants is that on 03.08.2016 at about 03.30 p.m., the deceased had travelled in a two wheeler bearing Registration No.TN-54-C-5188 as a pillion rider in Karur to Madurai Bye-Pass Road. The police van bearing Registration No.TN-64-G-0200 had come behind in a rash and negligence manner and dashed against the two wheeler. As a result, the deceased Selvaraj succumbed to injuries and died. He was working as a Supervisor in M/s.Rajesh-A-Traders, Sukkaliyur and earning a sum of Rs.20,000/- per month. The



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respondents/claimants are the dependants on his income for their existence. After his death, they find it difficult for their livelihood.

Therefore, the petitioners are seeking the claim of Rs.40,00,000/-.

3. This petition was resisted by the appellant/respondent stating that the two wheeler was driven by its rider in an uncontrolled speed on the wrong side of the road and the two wheeler had fallen down and the accident had happened. The rider of the two wheeler had not followed the rules of the road and he was responsible for his rash and negligent riding. In the criminal case filed against the driver of the police van bearing Registration No.TN-64-G-0200, the driver was acquitted after trial.

4. During enquiry before the Tribunal, on the side of the appellants, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P12 were marked. On the side of the respondents, R.W.1 was examined and no document was marked.

5. Considering the oral and documentary evidence, the Tribunal awarded a sum of Rs.15,67,000/- as compensation. Challenging the



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same, this appeal is filed on the ground that fixing of monthly income for the deceased as Rs.11,000/- in the calculation of compensation, is not correct, when no evidence was produced with regard to the earnings of the deceased. The claimants were awarded under the heads of loss of consortium and also love and affection and that is not appropriate.

6. The learned counsel for the appellants submitted that the accident had happened not because of the rash and negligent driving of the driver of the police van bearing No.TN-64-G-0200, but the rider of the two wheeler bearing Registration No.TN-54-C-5188 had ridden the two wheeler in a rash and negligent manner and caused the accident. The quantum of compensation awarded is excessive, when there is no evidence produced to show the income of the deceased.

7. In response, the learned counsel for the respondents would submit that the oral and documentary evidence produced in this case, especially, the criminal case records in the form of First Information Report, Motor Vehicle Inspector's Report, Post-Mortem Certificate and Rough Sketch clearly show that when the two wheeler, in which, the deceased was travelling has been ridden on the left extreme of the road,



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i.e., on the eastern side of the road, when proceeding from north to south direction, the driver of the van bearing Registration No.TN-64-G-0202 had come from behind in a rash and negligent manner and dashed against the two wheeler.

8. This Court, on going through the criminal Court records, especially, Ex.P5, Rough Sketch finds absolute merits in the submission of the learned counsel for the respondents. The Rough Sketch shows that the scene of the crime, i.e., place of the accident is on the left extreme, i.e., that is on the eastern side of the north-south road. There is no dispute with regard to the fact that the two wheeler was going from north to south and the van driver also had come from north to south. Thus, the Rough Sketch clearly exposes the fact that when the two wheeler had gone on the left extreme of the road, the van came from behind and dashed against the two wheeler. There is no hesitation in concluding that the driver of the police van was alone responsible for the accident. Thus, this Court cannot take a different view of the matter that was taken by the learned Tribunal.



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9. With regard to quantum of compensation fixed, no doubt, the claimants have not produced any pay certificate and other documents to show the monthly income of the deceased. The accident had happened in the year 2016. Considering the age of the deceased, fixing monthly income of the deceased at Rs.11,000/- cannot be considered as excessive. It is just and appropriate. Therefore, this Court does not intend to interfere with the income of Rs.11000/- fixed as monthly income of the deceased. However, this Court finds that the claimants were awarded under the head of loss of consortium at Rs.40,000/- and the compensation of Rs.2,00,000/- under the head of loss of love and affection. It is excessive. When a compensation was awarded under the head of consortium, again compensation cannot be awarded under the head of Love and affection.

10. As per judgment of the Hon'ble Supreme Court in ***Magma General Insurance Company Limited .vs. Nanu Ram @ Chuhru Ram reported in 2018(2) TN MAC 452(SC)***, the claimants are entitled for parental consortium and filial consortium at Rs.40,000/- each. Therefore, this Court awards a sum of Rs.40,000/- each to the respondents for loss of consortium, totally, a sum of Rs.1,60,000/-. Since a sum of



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Rs.1,60,000/- is awarded under the head of loss of consortium, the claimants cannot be awarded compensation under the head of loss of love and affection and thus, the compensation of Rs.2,00,000/- given under the head of loss of love and affection is set aside and the compensation awarded under the other heads are confirmed.

11. In view of the discussions held above, this Court modifies the compensation awarded by the Tribunal, as under:

S. No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	Loss of future income	Rs.12,87,000/-	Rs.12,87,000/-	Same
2	Loss of Consortium	Rs.40,000/-	Rs.1,60,000/-	Enhanced
3	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Same
4	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Same
5	Transport Expenses	Rs.10,000/-	Rs.10,000/-	Same
6	Loss of Love and affection	Rs.2,00,000/-	Nil	Set aside
	Total	Rs.15,67,000/-	Rs.14,87,000/-	Reduced

11. In fine, the Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal is reduced from



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Rs.15,67,000/- to Rs.14,87,000/- with interest at 7.5% p.a from the date of claim petition till the date of realisation. The appellants are directed to deposit the compensation amount awarded by this Court i.e., Rs.14,87,000/- with accrued interest and costs, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents herein are at liberty to withdraw the same, as apportioned by the Tribunal, after following due process of law. If the appellants had already deposited the compensation awarded by the Tribunal, then, they are at liberty to withdraw the balance amount, which is in excess of the amount awarded by this Court, after following due process of law. No costs. Consequently, connected miscellaneous petition is closed.

Index :Yes/No
Internet :Yes/No
NCC :Yes/No

20.10.2023

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To

The Motor Accident Claim Tribunal/District Judge,
Karur.



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G.CHANDRASEKHARAN,J.

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