



C.M.A.No.490 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.490 of 2021

1.Devi

2.Velu

3.Kandan

4.Ranganayagi

... Appellants

Vs.

1.M/s.Eskay Trans

(Since R1 remained exparte before the
Tribunal his presence may be dispensed with)

2.The Reliance General Insurance Company Limited,
having its office at
Reliance Towers, Sasthri Bhavan Road,
Nungambakkam,
Chennai – 600 034.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award dated 16.03.2018 and made in M.A.C.T.O.P.No.757 of 2014 on the file of the Motor Accident Claims Tribunal, The IV Additional District Judge, Ponneri.

For Appellants : Ms.Lavanya

for M/s.K.M.Ramesh

For Respondents : R1 – NDW vide VPSR5919

Mrs.C.Bhuvanasundari for R2



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J U D G M E N T

This appeal has been filed by the appellants/ claimants against the judgment and decree dated 16.03.2018 in M.C.O.P.No.757 of 2014 on the file of the Motor Accident Claims Tribunal, The IV Additional District Judge, Ponneri.

2.The learned counsel appearing for the appellants submitted that on 04.09.2014 at about 05.30 a.m., the deceased Durai was riding the motorcycle bearing Registration No.TN-05-AX-7570 at GNT Road in front of Kavangarai Fish Market, Puzhal, Chennai from South to North direction. At that time, the driver of the tipper lorry bearing Registration No.TN-69-AK-8994 drove the vehicle in a rash and negligent manner and suddenly stopped without giving any signal and the motorcycle dashed behind the right side back tyre of the tipper lorry, due to which, the deceased lost his life.

3.The learned counsel appearing for the appellants further submitted that thereafter, the wife, sons and mother of the deceased Durai/ appellants/ claimants filed claim petition before the Motor Accidents Claims Tribunal, claiming a sum of Rs.9 Lakhs as



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compensation. After adjudication, the Tribunal fixed 25% negligence on the part of the deceased and awarded a sum of Rs.10,06,000/- and directed that the claimants are entitled to a sum of Rs.7,54,500/- as compensation along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit with proportionate costs. Aggrieved by the 25% negligence fixed on the deceased and seeking enhancement in compensation, the claimants have preferred this appeal.

4.The learned counsel appearing for the appellants further submitted that in order to prove the case the claimants examined P.W.1 and P.W.2 and marked exhibits Ex.P.1 to Ex.P.12 and the Insurance Company examined one witness R.W.1, however, not marked any exhibit. The learned counsel further submitted that the driver of the tipper lorry drove the vehicle in a rash and negligent manner and suddenly stopped the vehicle without giving any signal and hence, the motorcycle dashed behind the right side back tyre of the tipper lorry, however, the Tribunal fixed 25% negligence on the deceased, which is not sustainable one.

5.The learned counsel appearing for the appellants further



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submitted that the Tribunal has not awarded any amount towards love and affection and further submitted that at the time of accident the deceased was 48 years old and was a milk vendor and was earning Rs.600/- per day, however, the Tribunal fixed the notional monthly income of the deceased as Rs.8,000/- per month and awarded a meagre compensation to the claimants and hence, the appellants are entitled for enhanced compensation.

6.Per contra, the learned counsel appearing for the second respondent Insurance Company submitted that the Tribunal after considering all the factual aspects, awarded the compensation which is just and reasonable and hence, the impugned judgment warrants no interference.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent and perused the materials available on record.

8.The accident and the manner in which the accident happened are not disputed. Aggrieved by the 25% negligence fixed on the



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deceased and seeking enhancement in compensation, the claimants have preferred this appeal.

9.The claimants claim that on 04.09.2014 at about 05.30 a.m., the deceased Durai was riding the motorcycle in front of Kavangarai Fish Market, Puzhal, Chennai from South to North direction. At that time, the driver of the tipper lorry drove the vehicle in a rash and negligent manner and suddenly stopped without giving any signal and the motorcycle dashed behind the right side back tyre of the tipper lorry, due to which, the deceased lost his life. Admittedly, without keeping any safety distance, the deceased dashed on the rear side of the tipper lorry and hence, the Tribunal fixed 25% negligence on the deceased, which warrants no interference.

10.The tribunal after elaborately discussing the factual aspects awarded a sum of Rs.9,36,000/- for loss of dependency, Rs.40,000/- for loss of consortium, Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and arrived at a total compensation of Rs.10,06,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.



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11.The accident is of the year 2014. Hence, this Court fix a sum of Rs.11,000/- as the monthly notional income of the deceased. The Tribunal has not awarded any amount for future prospects. This Court is of the opinion that some amount has to be awarded for future prospects. At the time of accident the deceased was 48 years old and hence this Court awards 25% of income towards future prospects. The Tribunal has rightly deducted 1/4 of the amount towards personal expenses and has rightly adopted the multiplier 13. Hence, the amount awarded for loss of dependency works out to Rs.16,08,828/- [Rs.11,000/- X 25% = Rs.2,750/-; Rs.11,000/- + Rs.2,750/- = Rs.13,750/-; Rs.13,750 X 1/4 = Rs.3,437.5/-; Rs.13,750/- - Rs.3,437/- = Rs.10,313/-; Rs.10,313/- X 12 X 13 = Rs.16,08,828/-].

12.This Court is of the opinion that some amount has to be awarded for loss of love and affection. Accordingly, this Court awards a sum of Rs.1,20,000/- for loss of love and affection. The amount awarded under the other heads, in the opinion of this Court are just and reasonable and the same are confirmed.

13.Accordingly, the compensation amount is re-assessed as



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follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of dependency	Rs. 9,36,000/-	Rs.16,08,828/-
2.	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
3.	Loss of consortium	Rs. 40,000/-	Rs. 40,000/-
4.	Loss of estate	Rs. 15,000/-	Rs. 15,000/-
5.	Loss of love and affection	---	Rs. 1,20,000/-
	Total	Rs.10,06,000/-	Rs.17,98,828/-

14.The appellants/ claimants are granted a sum of Rs.17,98,828/- as total compensation. Since, 25% negligence is fixed on the deceased, the appellants/ claimants are entitled to a sum of Rs.13,49,121/- [Rs.17,98,828/- - Rs.4,49,707/- = Rs.13,49,121/-] along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

15.The civil miscellaneous appeal is partly allowed. The judgment and decree dated 16.03.2018 in M.C.O.P.No.757 of 2014 on the file of the Motor Accident Claims Tribunal, The IV Additional District Judge, Ponneri, is modified to the above extent.

16.The second respondent Insurance Company is directed to



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deposit the modified/ enhanced award amount before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants are permitted to withdraw their shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The appellants/ claimants shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellants/ claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accident Claims Tribunal, The IV Additional District Judge, Ponneri, shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellants/ claimants.

17.The civil miscellaneous appeal is partly allowed. No costs.

27.11.2024

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Motor Accident Claims Tribunal, The IV Additional District Judge,
Ponneri



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M.DHANDAPANI,J.
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