



C.M.A.No.1889 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 08.03.2024	Pronounced on 30.04.2024
---------------------------	-----------------------------

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1889 of 2021

1.A.Rajendiran
S/o.Arunachalam

2.Prema Gandhi
W/o.A.Rajendiran

3.R.Karishma
D/o.Rajendiran

4.R.Karthikeyan
S/o.Rajendiran
All are residing at
Karaimedu
Arasanatham Post, Attur Taluk
Salem District

... Appellants

Vs.

1.N.Rajkumar
S/o.Narayanan
No.9-172/6-82 Ward 2, South Kadu
Seeliyampatty Pudhur Post
Attur Taluk, Salem 636 107

2.The Reliance General Insurance Company Limited



C.M.A.No.1889 of 2021

having office at Sree Lakshmi Complex
1st Floor, Omalur Main Road, Bharathi Street
Swarnapuri, Salem 636 004.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 07.07.2020 made in MCOP.No.1135 of 2018 on the file of the Special District Judge, MCOP Tribunal at Salem.

For Appellants : Mr.P.Tamilavel

For Respondents : Mrs.C.Bhuvanasundari (for R2)

J U D G M E N T

The Appeal has been filed against Judgment and Decree dated 07.07.2020 made in MCOP.No.1135 of 2018 on the file of the Special District Judge, MCOP Tribunal at Salem.

2.The claim Petitioners are the Appellants herein and they filed this Appeal, seeking enhancement of compensation awarded in MCOP.No.1135 of 2018 on the file of the Special District Judge, MCOP Tribunal at Salem. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.



C.M.A.No.1889 of 2021

WEB COPY

3.The legal representatives of the deceased R.Geetha filed MCOP.No.1135 of 2018 on the file of the Special District Judge, MCOP Tribunal at Salem, seeking compensation and filed this Appeal on the point of quantum.

4.The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are not under challenge in this Appeal. Accordingly, the finding rendered by the trial Court that the accident taken place due to the rash and negligent driving of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are hereby confirmed.

5.During the trial, on the side of the claim Petitioners, PW1 to PW3 were examined & Ex.P.1 to Ex.P.15 were marked and on the side of the Respondents, no one was examined and none was marked. Ex.C1(s) was marked as Court document.

6.Heard the learned counsel appearing on behalf of the claim Petitioners and the learned counsel appearing on behalf of the Insurance Company.



C.M.A.No.1889 of 2021

WEB COPY

7.Learned counsel for the claim Petitioners contended that the Tribunal has fixed the notional income at Rs.10,000/-, which is very low for an engineering graduate. This Court has consistently taken a view that fixing of 10% of contributory negligence for non wearing of helmet is fair. PW2, who is the occurrence witness, at the time of the cross examination admitted that the deceased was not wearing helmet at the time of accident even though the rule of wearing helmet is in force. Hence, in view of the admission of PW2/occurrence witness, the contributory negligence on the part of the deceased is fixed at 10%.

8.On the point of quantum of notional income, the Tribunal has fixed the notional income of the deceased at Rs.10,000/-. In this connection, my attention was drawn to the oral evidence of PW3, who is said to be the Manager (HR) of Happy Future Multi Purpose Co-operative Society Ltd., and Ex.C1/original records, called for from the Tribunal viz., Transfer Certificate, Course Completion Certificate, Provisional Certificate, B.E.Degree Grade statement, appointment order and salary certificate of the deceased. On perusing the same, considering the oral evidence of P.W.3 coupled with documentary evidence of Ex.C1, I am of the considered view Rs.15,000/- could be fixed as monthly



C.M.A.No.1889 of 2021

income of the deceased.

9.The Tribunal has added 40% towards future prospects of the deceased, deducted 50% towards personal expense of the deceased, adopted '18' as multiplier as per the judgment of the Hon'ble Supreme Court in the case of ***Sarla Verma & Others .Vs. Delhi Transport Corporation & another***, reported in ***2009 (2) TNMAC 1 (SC)***. The same are hereby confirmed. Hence, the pecuniary loss sustained by the claim Petitioners are re-assessed as follows:

$$[\text{Rs.15,000/-} + (40\% \text{ of } 15,000\text{-})] \times 1/2 \times 12 \times 18 = \text{Rs.22,68,000/-}$$

10.The Tribunal has awarded a sum of Rs.15,000/- each towards loss of estate and for funeral expenses. The same are hereby confirmed. Apart from this, a sum of Rs.40,000/- each is awarded to the claim Petitioners towards loss of love and affection to the claim Petitioners and a sum of Rs.15,000/- is awarded towards transportation charges.

<i>S.No.</i>	<i>Head</i>	<i>Amount (Rs.)</i>
1	Pecuniary loss	2268000
2	Loss Love and affection	160000
3	Funeral expenses	15000



C.M.A.No.1889 of 2021

S.No.	Head	Amount (Rs.)
4	Loss of Estate	15000
5	Transportation charges	15000
	Total Compensation	2473000
	90% of compensation	2225700

In total, the claim Petitioners are entitled to a sum of Rs.22,25,700/- (Rupees twenty two lakhs twenty five thousand and seven hundred only) and the interest awarded by the Tribunal at the rate of 7.5% per annum is also confirmed.

11.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the compensation from Rs.13,15,200/- to Rs.22,25,700/- to the extent indicated above. No Costs.

(ii) the Insurance Company is directed to deposit the enhanced award amount, with 7.5% interest per annum and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, all the claim Petitioners/Appellants are entitled to get their share in the enhanced award amount, as per the ratio of



C.M.A.No.1889 of 2021

apportionment made by the Tribunal. The claim Petitioners are permitted to withdraw their entire share with proportionate interest and costs, less the award amount already withdrawn, if any, by filing necessary application before the Tribunal.

(iv) the claim Petitioners are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

30.04.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

sai

To
The Special District Judge
MCOP Tribunal at Salem



WEB COPY



C.M.A.No.1889 of 2021

RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

C.M.A.No.1889 of 2021

Dated: 30.04.2024