



C.M.A.No.1444 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 16.02.2024	Pronounced on 04.03.2024
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

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1.S.Anandhan
S/o.Shanmugam

2.A.Vijayalakshmi
W/o.S.Anandhan

Both are residing at
No.24/27, Thillainagar
1st Cross, Poonamapet
Salem 636 001

... Appellants

Vs.

1.T.Sumathi
W/o.Thangavel
No.6/1050, EB Colony
Merkku Thottam, Paramathi Road
Namakkal 637 001

2.National Insurance Company Ltd.,
Rep. by the Divisional Manager
L.R.N.Compound, Saradha College Main Road
Salem 636 007

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the



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Judgment and Award of the Motor Accident Claims Tribunal at Salem (In the Court of the Special District Judge), Salem made in MCOP.No.311 of 2018, dated 04.11.2020.

For Appellants : Mr.P.Dinesh Kumar

For Respondents : Mr.D.Bhaskaran (for R2)

J U D G M E N T

The Appeal has been filed against Judgment and Award of the Motor Accident Claims Tribunal at Salem (In the Court of the Special District Judge), Salem made in MCOP.No.311 of 2018, dated 04.11.2020.

2.The claim Petitioners are the Appellants herein and they filed this Appeal, seeking enhancement of compensation awarded in MCOP.No.311 of 2018 on the file of the Motor Accident Claims Tribunal at Salem (In the Court of the Special District Judge), Salem. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The legal representatives of the deceased Sethuraman filed MCOP.No.311 of 2018 on the file of the Motor Accident Claims Tribunal at



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Salem (In the Court of the Special District Judge), Salem, seeking compensation and filed this Appeal on the point of negligence and 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 & PW2 were examined & Ex.P.1 to Ex.P.20 were marked and on the side of the Respondents, RW1 was examined and no document was marked. Ex.C1 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.



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7. During trial, father of the deceased was examined as PW1 and occurrence witness was examined as PW2 and an Assistant from the RTO was examined as RW1. On considering the evidence of the occurrence witness/PW2, the trial Court concluded that on the date of the accident, the deceased was not wearing helmet and accordingly fixed the contributory negligence of 15% on the deceased and 85% on the driver of the lorry. With regard to quantum, since the deceased completed B.E., degree, the Tribunal fixed the notional income at Rs.10,000/-.

8. After appreciation of evidence of PW2 and other records and I find that admittedly, the deceased does not wear helmet on the date of the accident and therefore, contributory negligence on the part of the deceased could be fixed at 10% and remaining 90% could be fixed on the part of the driver of the lorry. From the evidence of RW1/Manimozhi, who is an Assistant from the office of RTO and Ex.C1, which is the extract of driving licence of the driver of the lorry, on the date of the accident, the driver of the lorry has valid driving licence and the lorry has valid insurance policy. Therefore, both owner of the vehicle and insurer of the vehicle are jointly and severally liable to pay



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compensation to the claim Petitioners.

9.Taking into consideration the facts and circumstances of the case, I am inclined to fix the monthly income of the deceased, who is a B.E., graduate at Rs.15,000/-. The Tribunal has added 40% towards future prospects, deducted 50% towards personal expenses of the deceased and adopted '18' as multiplier . The same are hereby confirmed. Hence, the pecuniary loss sustained by the claim Petitioners are re-assessed as follows:

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

10.The 1st and 2nd claim Petitioners as Father and Mother are entitled for Rs.75,000/- each towards loss of love and affection. The Tribunal has awarded a sum of Rs.15,000/- towards loss of estate and a sum of Rs.15,000/- towards funeral expenses. The same are hereby confirmed. Further a sum of Rs.15,000/- is awarded towards transportation.

<i>S.No.</i>	<i>Head</i>	<i>Amount (Rs.)</i>
1	Pecuniary loss	2268000
2	Loss Love and affection	150000
3	Transportation	15000
4	Funeral expenses	15000



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S.No.	Head	Amount (Rs.)
5	Loss of Estate	15000
	Total Compensation	** Expression is faulty **
	90% of the compensation	2216700

In total, the claim Petitioners are entitled to a sum of Rs.22,16,700/- (Rupees twenty two lakh sixteen 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.22,16,700/- 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, the claim Petitioners/Appellants are entitled to get their share in the enhanced award amount, as per the ratio of apportionment



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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.

04.03.2024

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

sai

To

Special District Judge
Motor Accident Claims Tribunal
Salem



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RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

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Dated: 04.03.2024