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C.M.A.No.1617 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.No.1617 of 2021

and

M.C.O.P.No.442 of 2016

1. Deepa
2. Minor. Dharun Vijai
3. Minor Gowtham Vijai
4. Ellammal
5. Lakshmireddy

... Appellants/Petitioners

Vs.

1. S.R.S. Travels,
Prop. K.T.Rajasekar,
D.No. 321/3, T.S.P.Road,
Opp BMC Kalasipalayam,
Bangalore District – 560 002.

2. The New India Assurance Company Limited,
D.No. 2-B, Unity Building Annexe,
P.Kalinga Rao Road (Mission Road)
Bangalore District – 560 273

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgement and decree dated 01.10.2019 made in M.C.O.P No. 442 of 2016 on the file of MACT/Additional District Court (FAC) at Namakkal.



For Appellants : Mr. MA.P.Thangavel

For R1 : Ex-parte

For R2 : Ms.R.Sreevidhya

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P.No. 442 of 2016 dated 01.10.2019 on the file of MACT/Additional District Court (FAC) at Namakkal.

2. For better appreciation, the parties are referred according to their litigative status before the Tribunal below.

3. The facts leading to filing of the claim petition are as follows :

3.1 The deceased Rajkumar was a owner of two crane vehicles. By lending the same for hiring, the deceased Rajkumar earning nearly Rs.1,00,000/- The first petitioner is the wife, the second and third petitioners are the minor children and the fourth and fifth petitioners are the parents of the deceased Rajkumar.

3.2 On 30.01.2016 at about 3.40 am, while the deceased Rajkumar was driving earth moving equipment (mobile cranes) from Salem to Karur on the National Highways, near Velur Ponni Concrete, the bus which was came on same direction hit behind the Crane Vehicle which resulted in



causing grievous injuries to the deceased Rajkumar and he died on the spot.

3.3 Aggrieved over the act committed by the driver of bus belonging to the first respondent, the claimants were came forward with the claim petition seeking compensation for a sum of Rs. 80,00,000/- by invoking under Section 166 of Motor Vehicle Act, 1988.

4. The first respondent is the owner of the bus remained ex-parte. The Second respondent is the insurer contested the claim and disputed the manner in which the accident had taken place. It is also alleged by the second respondent that the crane vehicle was suddenly crossed from one lane to another lane of the road without taking due care and caution which resulted in accident. They have also disputed the age, income, avocation of the deceased and also dependency of the claimants.

5. The Tribunal after accepting the case of the claimants has quantified the compensation and awarded Rs. 24,32,600/- along with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The claimants have aggrieved over the quantum of compensation awarded by the Tribunal, approached this Court seeking enhancement of compensation. The respondents have not filed any appeal against this order.



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6. The learned counsel appearing for the claimants would submit that the deceased herein was a successful businessman, owned two mobile cranes vehicles and by lending the same for hiring he was earning nearly more than Rs.1,00,000/- per month. Even though the income tax returns have not been produced to show the income, the claimants were able to produce the ownership documents of the mobile cranes, bank statements, heavy vehicle licenses of the deceased. The Tribunal without considering the above documents has fixed notional income of the deceased as Rs. 15,000/- and prays to enhance the notional income fixed by the Tribunal. He has also submitted that the compensation awarded under other conventional heads is on the lower side hence, prays to modify the same.

7. The learned counsel for the insurance company/second respondent has submitted that prior to the accident, the deceased has sold one vehicle and at the time of accident he owned only one mobile crane and Bank statement shows that there was no cash balance and the deceased was not earning huge income as stated by the claimants.

8. He further submit that considering all the aspects, the Tribunal has rightly fixed the income of the deceased notionally and there is no need for enhancement of the same.



9. I have considered the arguments of the learned counsels appearing on either side and I have perused the entire material placed on record.

10. The claimants marked the R.C. book of the two cranes. According to them, both the vehicles were once owned by the deceased and he was earning income by lending the same for hiring. In the evidence of the P.W.1, it is elicited that after the death of the deceased one vehicle was sold by her and another vehicle was seized by the Finance Company for defaulting payment of loan.

11. Even though the bank statement of the deceased produced, it has not reflected the income earned by way of profit and it has no substantial cash balance in the bank account. This statement only shows that whatever the deceased earned have been spent under various sources. Based on the bank statement, it is not possible to cull out what is the real income of the deceased since it contains lot of expenses and lot of deposits. The proper documents to show the income of the deceased earned from the business, carried by the deceased would be the statement of audited accounts. But the same has not been produced before the Tribunal. Further, evidence shows that one of the vehicle was sold prior to the death of the



deceased. Hence there is no evidence placed on record to show that what was the exact income earned by the deceased in this case.

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12. In the absence of any proof of income then only course open to the tribunal is to fix the income notionally. Admittedly, the accident was taken place while the deceased was driving the mobile crane in the road and he was a holder of heavy vehicle driving licenses.

13. Before the Tribunal the Division Bench judgment of this Court in the case of ***Manager, TNSTC Vs A. Makbool John and others reported in 2018(1) TN MAC 791 (DB)*** was relied on to show that the income of the driver was fixed as Rs.15,000/-.

14. This Court is of the view that there is no scope for enhancing the compensation since the Bank Statements itself is showing different pictures and this Court is of the view that notional income fixed by the Tribunal need not be interfered and same is hereby confirmed. The Tribunal has awarded Rs. 40,000/- under the head of loss of consortium. However, as per the Judgment of Hon'ble Apex Court in ***United India Insurance Co. Limited v. Satinder Kaur and ors. (MANU/SC/0500/2020: (2021) 11SCC 780)*** and ***Magma General Insurance Co.Ltd., Vs. Nanu Ram reported in 2018 ACJ 2018***, all the claimants are entitled for



Rs.40,000/- each. Accordingly, 5x Rs.40,000/- = Rs.2,00,000 is awarded under the head of loss of consortium. As for all the compensation awarded under other heads are hereby confirmed.

15. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:-

<i>Description</i>	<i>Amount Awarded by Tribunal (Rs.)</i>	<i>Amount Awarded by the Court (Rs.)</i>	<i>Award confirmed or enhanced or reduced</i>
Loss of Income	23,62,584/-	23,62,584/-	Confirmed
Loss of estate	15,000/-	15,000/-	Confirmed
Funeral expenses	15,000/-	15,000/-	Confirmed
Loss of consortium	40,000/-	2,00,000/-	Enhanced
Total compensation	24,32,584/-	25,92,584/-	Enhanced

16. The claimants would be entitled to a sum of Rs.25,92,584/- as enhanced compensation along with interest at the rate of 7.5% per annum from date of accident till date of deposit. The insurance company is directed to deposit the enhanced compensation of Rs.25,92,584 /- less the amount, if any, already deposited within a period of six weeks from the date of receipt of copy of this order. Out of total compensation, the first claimant is entitled to Rs. 8,00,000/-, the fourth and fifth claimant are entitled for each Rs.1,00,000/-, the balance amount shall be equally shared between the second and third claimants. The claimants are also permitted to withdraw



their respective compensation by filing the appropriate petition before the Tribunal. The claim amount regarding the second and third claimants may be deposited in their respective name in any one of the Nationalized Bank under fixed deposit till they attain the age of majority. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

23.02.2024

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Index: Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No

To

1. The Motor Accidents Claims Tribunal
Additional District Court (FAC), Namakkal.
2. The Section Officer,
VR Section, High Court, Madras.



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