



C.M.A.No.2661 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 08.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

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1. Kamachi
2. Sudha
3. Susila
4. Baskaran

...Appellants

Vs.

1. S.Mariana Rajkumar
2. TATA AIG General Insurance Co. Ltd.,
2nd floor, Samson Towers,
No.403, L. Pantheon Road,
Egmore, Chennai – 600 008

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, to set aside the award passed by the Motor Accidents Claims Tribunal and Sessions Judge, Mahila Court, Perambalur by its decree and Judgment dated 18.02.2021 and made in M.C.O.P.No.555 of 2018.



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For Appellants : Mr.C.Sangamithirai

For Respondents :

For R2 : Mr.E.Rajadurai

for Ms.M.B.Gopalan Associates for R2

For R1 : Not Ready in Notice

JUDGMENT

The above Civil Miscellaneous Petition is directed against the order passed by the Motor Accident Claims Tribunal and Sessions Judge, Mahila Court, Perambalur dated 18.02.2021 in M.C.O.P.No.555 of 2018.

2. For the sake of convenience, the parties herein are referred to as they are ranked before the Tribunal.

3. Shortly stated, as per the claim of the petitioners, the accident occurred on 07.05.2018 at about 11.20 a.m., the said Ayyakannu was riding in the Heavy Duty Two wheeler vehicle bearing Registration No.TN 46 Q 8235



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on Chennai - Trichy NH 45 road from north to south keeping his extreme left side of the road. When the said Ayyakannu was proceeding near Alathur gate Raja Vengaya Pattarai, the 1st respondent's Hyundai Verna Car bearing Registration No.TN 22 CD 7339 was proceeding in the same direction which was driven by its driver in a rash and negligent manner with hectic and uncontrollable speed. Without blowing horn and without minding other road users, came behind and dashed the said Ayyakannu 's two wheeler vehicle and caused the accident. Due to this, the said Ayyakannu was thrown away and has sustained fatal injuries all over the body particularly in head, both hands and both legs. After the accident, the said Ayyakannu was taken to the Government Hospital, Perambalur. But unfortunately due to the accidental injuries, he died on the enroute to the hospital. Thereafter, the corpse of the deceased Ayyakannu was admitted at the Government Hospital, Perambalur, where the postmortem was conducted by the duty medical officer.

4. The FIR was registered in Crime No.147 of 2018 under Section 279 and 304 A of IPC by the Padalur Police Station. As per the claim petition the deceased was doing agricultural work and he was foreign return thereby he



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earned not less than a sum of Rs.20,000/- per month. Accordingly, the legal heirs of the deceased claiming compensation for Rs.20,00,000/-.

5. The 2nd respondent/Insurance Company in their counter affidavit resisted the claim on the ground that the deceased without following the traffic rules, suddenly entered the main road and hit on the 1st respondent vehicle. Hence, the deceased contributed to the accident. It is further stated that the appellants claiming compensation at Rs.20,00,000/- is on higher side.

6. Accordingly, the claims Tribunal framed the following points for consideration:-

1. Whether the accident was on account of the rash and negligent driving of the driver of the 1st respondent's vehicle?
2. Whether the petitioners are entitled to compensation from the respondent's? If so, to what extent?
3. To what other relief the petitioners are entitled?

7. After considering the materials placed on record, the Tribunal came to the conclusion that the accident took place as alleged and the claimants are



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entitled for compensation. The Tribunal has awarded compensation of Rs.7,82,800/- carrying interest at the rate of 7.5% per annum. Through this appeal, the claimants challenging the quantum of compensation.

8. The learned counsel for the appellants/claimants would submit that at the time of accident, the deceased was a foreign return and by doing agricultural business, he earned a sum of Rs.20,000/- per month. However, the Tribunal failed to consider the above facts and erroneously fixed the income of the deceased at Rs.8,000/- which is very meager. It is also submitted that the deceased survived with his wife and three children, no amount was awarded under the head loss of love and affection. Hence, the rule of just compensation awarded by the Tribunal has to be enhanced.

9. The learned counsel for the 2nd respondent/Insurance Company objected the claim made by the appellants and stating that in the absence of proof of income, the Tribunal has rightly fixed the income at Rs.8,000/- per month, which calls for any interference.



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10. Heard both sides. Records perused.

11. There is no dispute with regard to taking place of accident, as alleged by the claimants, but for rash and negligent driving of the vehicle, it would not have taken place. Finding recorded by the learned claims Tribunal is therefore sustained.

12. The appeal is challenged only on the ground of quantum. Since there is no proof for agricultural income and considering the year of the accident, which took place in the year 2018 and nature of the case, this Court inclined to fix the income of the deceased at Rs.12,000/- per month. The Tribunal has awarded 10% for future prospects, which is found to be correct. Therefore, applying multiplier '9' and deducting 1/4th towards the personal expenses of the deceased, the compensation granted by the Tribunal towards loss of dependency is enhanced to Rs.10,69,200/- {Rs.12,000/- [Rs.12,000/- + Rs.1,200/- (10% of Rs.12,000/-)] X 12 X 9 X 3/4}.

13. On perusal of the records, it is seen that no amount has been



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awarded under the head loss of love and affection. Admittedly, the deceased was survived with his wife and three children and the Tribunal ought to have granted compensation under the head loss of Parental Consortium for the three children as per the Judgment of the Hon'ble Supreme Court in *Magma General Insurance Company vs. Nanu Ram @ Chuhru Ram [2018 (2) TNMAC 452 (SC)]*. Hence, I am inclined to grant Rs.40,000/- each for children of the deceased.

14. The compensation awarded by the Tribunal under the other heads are just and reasonable. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	7,12,800/-	10,69,200/-	Enhanced
2.	Consortium (for wife only)	40,000/-	40,000/-	Confirmed
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Loss of Parental Consortium (Rs.40,000 X 3)	-	1,20,000/-	Granted



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.7,82,800/-	Rs.12,59,200/-	enhanced by Rs.4,76,400/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,82,800/- is hereby enhanced to Rs.12,59,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw their respective shares from the award amount as apportioned by the Tribunal along with interest and costs, after adjusting the amount, if any, already withdrawn by making necessary applications before the Tribunal. The appellants are directed to pay the Court fee, if any on the enhanced amount of compensation. No costs.



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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

K.GOVINDARAJAN THILAKAVADI, J.

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To

1. Motor Accidents Claims Tribunal, Perambalur
2. The Section Officer,
VR Section,
High Court, Madras.

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