



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE K. RAJASEKAR

C.M.A.No.851 of 2021
and CMP.No.9705 of 2020

1. P.Santhi
2. G.Sivakumar
3. G.Jaisankar

.. Appellants

Vs.

1. G. Ramesh Babu
2. The Chief Manager,
The Oriental Insurance Co.Ltd.,
Third Party Claims Hub,
New No.216, Old No.115,
Prakasam Salai, Broadway,
Chennai 600 108.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 25.11.2019 made in M.C.O.P.No.1628 of 2015, on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Cuddalore.

For Appellants : Mr.A.N.Viswanatha Rao

For Respondents : No appearance for R1
Mr.J.Chandran for R2

**J U D G M E N T**

This Civil Miscellaneous Appeal has been filed by the claimants seeking for enhancement of the compensation awarded by the Tribunal dated 25.11.2019 made in M.C.O.P.No.1628 of 2015, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Cuddalore.

2. The parties herein are referred as per their litigative status before the claims Tribunal. The appellants are the claimants in M.C.O.P.No.1628 of 2015, on the file of Motor Accident Claims Tribunal, Principal District Judge, Cuddalore. They filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Indirani, wife of Govindaraj and appellants 1 to 3 are the daughter and sons of the deceased, who died in the accident that took place on 19.02.2015.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the car bearing Reg.No.TN 37 AQ 7129 and the respondents 1 and 2 are jointly and severally liable to pay compensation to the appellants. The Tribunal awarded a sum of Rs.1,20,000/- as compensation to the appellants and directed the 2nd respondent to pay the same.



4. Not being satisfied with the compensation awarded by the Tribunal, the appellants have come out with the present appeal, seeking enhancement of the same.

5. The learned counsel appearing for the appellants contended that the deceased was working as a milk vendor. The Tribunal fixed a meager sum of Rs.2,250/- per month as notional income of the deceased. The Tribunal has not awarded any amount for loss of estate and the amounts awarded by the Tribunal under different heads are very meager and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that in the absence of any proof with regard to the income of the deceased, the amounts fixed by the Tribunal as notional income is not meager. The Tribunal considering the relationship of the appellants, has awarded amounts under different heads which are proper compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellants as well as the 2nd



respondent and perused the materials on record.

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8. From the materials on record, it is seen the appellants have contended that the deceased was doing milk vending business and was earning a sum of Rs.10,000/- per month. They have not filed any material to prove the said contention. In the absence of any evidence to substantiate the same, the Tribunal fixed a sum of Rs.2,250/- per month as the notional income of the deceased. From Ex.P2 copy of the postmortem certificate of the deceased it was found that the age of the deceased was 80 years and has not granted any amount towards future prospect since the deceased was 80 years. Therefore, the annual income of the deceased was Rs.27,000/- and considering the dependency of the deceased $\frac{1}{3}$ rd of the income has been deducted for her personal expenses and thereby the annual income was Rs.18,000/- and by applying multiplier '5' the Tribunal has awarded Rs.90,000/-. The Tribunal quantified the compensation under the head loss of dependency and awarded Rs.90,000/- and the same is hereby confirmed. The Tribunal has awarded Rs.1,20,000/- towards loss of love and affection and funeral expenses. Under the conventional head of loss of consortium all the claimants are entitled to Rs.40,000/- each which includes loss of love and



affection as held by the Apex Court in the case of *United India Insurance*

Co. Limited Vs. Satinder Kaur and Ors. [MANU/SC/0500/2020:(2021) 11

SCC 780] . The Tribunal has failed to award any amount under the head loss of estate. Accordingly, Rs.15,000/- each is awarded under the head loss of estate and funeral expenses respectively.

9. 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	90,000/-	90,000/-	Confirmed
2.	Funeral expenses and Loss of love and affection	30,000/-	Funeral Expenses 15,000/-	Granted
3.	Loss of consortium	-	40,000/- each	Granted
4.	Loss of estate	-	15,000/-	Granted
	Total	1,20,000/-	2,40,000/-	Enhanced by Rs.1,20,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and



the compensation awarded by the Tribunal is enhanced to Rs.2,40,000/- with interest and costs. The second respondent-Insurance Company is directed to deposit the enhanced award amount, 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 order. On such deposit, the appellants/claimants 1 to 3 are permitted to withdraw their share with accrued interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn. The Appellants/claimants are directed to pay requisite court fee, if any for the enhanced award. No costs. Consequently, connected miscellaneous petition is also closed.

05.02.2024

Index : Yes / No
Speaking Order : Yes/ No
dpq

K. RAJASEKAR, J.



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To

1. The Motor Accidents Claims Tribunal,
Principal District Judge, Cuddalore.

2. The Section Officer,
VR Section,
High Court,
Madras.

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and CMP.No.9705 of 2020

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