



C.M.A. No. 2547 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.2547 of 2021

1. Duraisamy
 2. Nirmala
- ... Appellants / Petitioners

Vs.

1. Shri Hari Process
 2. United India Insurance Co. Ltd.,
Rep. by its Manager, SRS Towers,
Mettur Main Road,
Bhavani, Erode District.
- ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order dated 04.10.2017 passed in M.C.O.P. No.43 of 2013 on the file of IV Additional District Judge, Motor Accident Claims Tribunal, Erode District at Bhavani.

For Appellants : M/s. C. Kulanthaivel

For R1 : Ex-parte

For R2 : M/s. I. Malar



JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in passed in M.C.O.P. No.43 of 2013, dated 04.10.2017 on the file of IV Additional District Judge, Motor Accident Claims Tribunal, Erode District at Bhavani.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 11.12.2012, at about 09:05 PM, the deceased Kamala was travelling in a Private Bus bearing Registration No.TN-37-AF-0537 from Anthiyur to Bhavani, driven by its driver in a rash and negligent manner, while the bus reached near New Ideal School, Erattaikaradu, dashed against a TNSTC bus, thereby the deceased Kamala has sustained grievous injuries. Immediately, she was taken to Government Hospital, Bhavani and thereafter to Government Hospital, Erode and subsequently, succumbed to injuries. A criminal case was registered against the driver of the bus in Cr.No.790 of 2012 under section 279, 337, 304(A) of IPC on the file of Bhavani Police station. For the loss of deceased Kamala, the legal heirs of the deceased



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have come forward with claim petition seeking compensation for a sum of Rs.15,00,000/- by invoking section 166 of the Motor Vehicles Act, 1988.

4. The first and second respondents are the owner and insurer of the bus bearing Registration No.TN-37-AF-0537, respectively. The first respondent has not contested the claim and remained ex-parte. The second respondent - insurance company has filed a counter, disputing the manner in which accident has taken place and age, income and occupation of the deceased. The insurance company also contended that there is violation of policy condition by stating the driver of the first respondent does not possess a valid driving licence at the time of accident and the compensation claimed is also on the higher side.

5. The Tribunal after considering the evidence placed on record has held that the rash and negligent act on the part of the first respondent's driver is responsible for the accident and fixed the liability on the part of the second respondent - insurance company to indemnify the first respondent and to pay compensation to the claimant. The Tribunal has also quantified and granted compensation for a sum of Rs.3,74,000/- along with interest @



7.5% per annum from the date of filing of petition till the date of realization.

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6. Aggrieved over the award, the claimants have filed this appeal seeking enhancement of compensation.

7. The learned counsel for the claimants submitted that the compensation awarded under various heads are on the lower side, more particularly, the notional income fixed on the deceased. He also relied on the identity card issued by the Tamil Nadu Labour Welfare Department to show that the deceased is an unorganized labourer but this was not taken into note by the Tribunal at the time of fixing the notional income, hence prays to enhance the compensation.

10. The learned counsel for the insurance company submitted that the claimants claimed that the deceased was earning only Rs.7,000/- per month and based on the evidence place on record, the Tribunal has rightly fixed Rs.6,000/- per month as notional income and also awarded compensation under the conventional heads, hence prays to confirm the award.



11. I have considered the submissions made on both sides and perused the materials placed on record.

12. In this case, the Tribunal has fixed the age of the deceased as 60 years based on Ex.P.6 - Post-mortem certificate and it has also observed the identity card issued to the deceased by the Tamil Nadu Labour Welfare Board, which shows that she is a member of unorganized labourer. According to the claimants, the deceased was earning Rs.7,000/- per month by working as a coolie in a textile mill, the Tribunal based on the above evidence and considering the age and avocation of the deceased has fixed Rs.6,000/- as monthly notional income of the deceased. This Court finds no infirmity in fixing notional income of the deceased and there is no need for revision of notional income. The Tribunal by following the dictum laid down in *Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]*, has rightly fixed the multiplier as '9', however, it has not awarded future prospectus, as per the judgment of Hon'ble Apex Court in *National Insurance Co. Ltd., vs. Pranay Sethi and other [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]*, the persons in the age group of 50-60 years are entitled to 10% future



prospectus.

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13. The Tribunal after considering that the first claimant, who is the husband of the deceased died during the pendency of the claim petition, apportioned compensation to the second and third claimants, who are the son and daughter of the deceased respectively, has made 50% deduction towards the personal and living expenses of the deceased. This Court is unable to appreciate the same since, in this case, both second and third claimants are the son and daughter of the deceased, since mother always spend her entire income to her family, hence deduction of 50% towards her personal and living expenses is not proper, hence this Court is inclined to fix the deduction towards personal and living expenses of the deceased as one-third (1/3). Accordingly, the compensation under loss of income is summed as follows:

Annual income (12 X Rs.6,000/-)	= Rs. 72,000/-
Future prospectus @ 10%	= Rs.7,200/-
Applicable multiplier	= 9
Total	= Rs.7,12,800/-
Deduction (1/3)	= Rs.2,37,600/-
Loss of income	= Rs. 4,75,200/-



14. The Tribunal has awarded Rs.10,000/- each to the second and third claimants under the head loss of love and affection, since the occurrence has taken place in the year 2012, the compensation awarded under the loss of love and affection is modified as loss of consortium and accordingly, this Court is inclined to award Rs.30,000/- each to the second and third claimants herein. The Tribunal has awarded Rs.25,000/- towards funeral expenses and Rs.5,000/- towards transportation expenses and this Court is inclined to modify the above heads and award amount as Rs.15,000/- each under the heads funeral expenses and loss of estate.

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

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of income	3,24,000/-	4,75,200/-	Enhanced
2.	Loss of estate	---	15,000/-	Granted
3.	Funeral expenses	25,000/-	15,000/-	Reduced
4.	Transportation expenses	5,000/-	---	Cancelled
5.	Loss of love and affection / modified to Loss of consortium	20,000/-	60,000/-	Enhanced
	Total Compensation	3,74,000/-	5,65,200/-	Enhanced



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16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,74,000/- is hereby enhanced to **Rs.5,65,200/- [Rupees Five Lakh Sixty Five Thousand and Two Hundred only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded 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 to the credit of M.C.O.P. No.43 of 2013 on the file of the IV Additional District Judge, Motor Accidents Claims Tribunal, Erode District at Bhavani. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced



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compensation. There shall be no order as to costs in the present appeal.

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The IV Additional District Judge,
Motor Accident Claims Tribunal,
Erode District at Bhavani.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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