



C.M.A. No. 2695 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2695 of 2021

1. Sahida Banu
2. Minor Hasini
3. Minor Ritheesh
[Minor appellants represented by their mother
viz., Sahida Banu, the first appellant herein]
... Appellants / Petitioners
Vs.
1. Anthoni Ambroise Raja
2. The TATA AIG General Insurance Company Ltd.,
Rep., by its Branch Manager,
No.202, 100 feet Road, Mudaliarpeta,
Puducherry-605 004.
3. Arumaikkanu ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree dated 12.05.2020 passed in M.C.O.P. No.230 of 2018 on the file of the Motor Accident Claims Tribunal, District Judge, Karaikal.

For Appellant : Mr.K.Varadha Kamaraj



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For R1 to R3 : No appearance
For R2 : Mr.J.Michael Visuvasam

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No.230 of 2018, dated 12.05.2020 on the file of the Motor Accident Claims Tribunal, District Judge, Karaikal, for the death of the deceased/Ramachandiran.

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

3. The claimants herein are the dependents of one Ramachandiran, Son of Selvaraj, who was working as a cleaner and helper under the first respondent herein. On 25.08.2018 at about 16.20 hours, while the deceased Ramachandran was travelling with the driver in a goods vehicle bearing Registration No. PY 02 R 8677, TATA Ace on Nagore main road, from North to South direction, while the goods vehicle reached



opposite to the Hotel namely Arun Inn, the goods vehicle was driven by its driver so negligently and hit on the Tree which was standing on the Eastern side of the road, which resulted in causing grievous injuries to the cleaner Ramachandiran and subsequently, he succumbed to the same. In this regard, a criminal case was also registered against the driver of the lorry belongs to the first respondent herein in Crime No.66 of 2018 on the file of T.R.Pattinam Police Station under Sections 279, 337 and 304-A IPC. The deceased was aged about 30 years and was earning a sum of Rs.500/- per day. The claimants are the wife and children and the third respondent is the mother of the deceased Ramachandiran.

4. The second respondent – Insurance Company has filed their counter and contended that the deceased has travelled in the goods vehicle as an unauthorized passenger in the goods vehicle and there is a violation of policy condition and that the claimants have to prove the age, dependency and income of the deceased and other aspects also. Hence prays to dismiss the claim.



5. The first respondent, who is the owner of the vehicle has not appeared before the Tribunal and was remained ex-parte. However, before the Tribunal, both the driver as well as the owner of the lorry, who is the first respondent have appeared and gave evidence stating that the deceased was a cleaner and was employed by the first respondent and has also received Rs.500/- per day as a salary.

6. The Tribunal has held that the cleaner cum helper has been covered under the insurance policy hence, the second respondent is liable to indemnify the first respondent and thereafter quantified the compensation and awarded a sum of Rs.27,15,000/- along with interest at the rate of 7.5% per annum as compensation.

7. The Tribunal further held that, the deceased is not a unauthorized passenger and he was cleaner working under Respondent No.1. The claimant has come forward with this appeal seeking enhancement of compensation.

8. The learned counsel for the claimants has submitted that even



though, there is an ample evidence placed on record to show that the claimants are entitled to get just compensation, the Tribunal has not awarded future prospects to the claimants. Hence prays for enhancement of compensation for the death of the deceased Ramachandiran.

9. Per Contra, the learned counsel appearing for the Second Respondent-Insurance Company has submitted that in this case, the first respondent who is the owner of the vehicle, instead of filing his counter and submit his evidence, chosen to go with the claimants and gave evidence infavour of the claimants admittedly the claim made by them. More particularly, admitting the employment of the deceased and his salary paid by him. This is strange and this itself is sufficient to show that there is a collusion between the owner of the vehicle and the claimants herein. Hence prays to dismiss the appeal.

10. I have heard the rival submissions made on both sides and also perused the records.

11. Admittedly, before the Tribunal, the driver of the lorry has been



examined as P.W.2 and he has admitted the negligent act committed by him.

Based on this evidence, the Tribunal has held that the driver of the lorry is a tortfeasor and that the owner of the vehicle and the Insurance company are liable to pay compensation to the claimants. It is also admitted fact that the cleaner of vehicle having insurance coverage for the injuries sustained or death caused to him. It is true that the first respondent has not been examined as a witness on behalf of the claimants instead he shall be examined only on the respondent side evidence if the first respondent has come forward to adduce his evidence in this case. The claimants are not entitled to examine the respondent and his evidence and it is open to the claimants that they can only seek for indulgence of this Court or the Tribunal to raise adverse inference if any of the evidence available with the respondent has not been produced before the Adjudicating Authority or the Tribunal.

12. In this case, even though, the Tribunal has examined the first respondent as P.W.3 for witness on behalf of the claimants, it seems second respondent, who is the contesting respondent before the Tribunal has not properly placed their objections for examining P.W.3 before the Tribunal.



The Insurance company has also examined their side witness as R.W.1 to show that apart from the deceased in this case, two other persons have travelled in the goods vehicle, the Tribunal has held that since the deceased in this case is a cleaner and has having insurance coverage, he is entitled to claim compensation. This Court finds there is no infirmity in such finding. Once the driver of the goods vehicle accepts that the deceased herein is the cleaner who travelled with him and since there is an insurance coverage for cleaner, he is entitled for compensation as claimed by the claimants. Hence this Court finds no infirmity in awarding compensation and directing the second respondent – Insurance Company to indemnify the first respondent herein.

13. With regard to the quantum of compensation, the Tribunal has failed to award future prospectus as held by the Apex Court in ***National Insurance Co. Ltd., vs. Pranay Sethi and other*** reported in ***[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]*** and this Court is of the view that considering the age of the deceased the claimants are entitled to get 40% of compensation as future prospects and only on the limited point, enhancement is prayed. The Tribunal by notionally fixed the income of the



deceased as Rs.15,000/- per month and this Court finds there is no infirmity in the finding. The deceased is aged about 30 years at the time of accident and considering the age of the deceased, the Tribunal has applied proper multiplier '17' as per the Judgment of the Apex Court in ***Sarla Verma and Others vs. Delhi Transport Corporation and Another [2009 (2) TNMAC 1 SC : 2009 (6) SCC 121]***. The claimants are three in persons and hence the Tribunal has deducted 1/3 as personal expenses of the deceased since the third respondent is the mother of the deceased and accordingly a sum of Rs.22,95,000/- [15000 x 12 x 17 x 1/4] was awarded under the head loss of income of the deceased and this Court is inclined to accept the same. Accordingly a sum of Rs.9,18,000/- [40% of Rs.22,95,000/-] added as future prospects of the deceased.

14. The Tribunal has awarded a sum of Rs.3,50,000/- under the head loss of love and affection to the petitioners 1 to 3 and also a sum of Rs.40,000/- awarded under the head loss of consortium. Considering the Judgment of the Apex court in ***National Insurance Co. Ltd., vs. Pranay Sethi and other*** reported in ***[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]*** and the ***United India Insurance Co., Limited vs. Satinder Kaur and***



Ors. [MANU/SC/0500/2020 : (2021) 11 SCC 780] held thus compensation awarded under the head Loss of Consortium includes Loss of Love and Affection, Loss of Consortium awarded under the head Loss of Love and Affection is hereby cancelled. Accordingly, this Court modifies the compensation awarded under both heads and granted a sum of Rs.40,000/- to the each claimants and the third respondent under the head loss of consortium. As far as other conventional heads are concerned, the same are reasonable and the same are hereby confirmed.

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	Rs.22,95,000/-	Rs.22,95,000/-	Enhanced
2	Loss of Love and Affection	Rs.3,50,000/-	---	Rejected
3	Loss of Consortium	Rs.40,000/-	Rs.1,60,000/-	Enhanced
4	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
5	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
6	Future Prospects	---	Rs.9,18,000/-	Granted
	Total Compensation	Rs.27,15,000/-	Rs.34,03,000/-	Enhanced by Rs.6,88,000/-



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16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.27,15,000/- is hereby enhanced to Rs.34,03,000/- [Rupees Thirty Four Lakhs and Three Thousand only] together 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 now 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.230 of 2018 on the file of the Motor Accidents Claims Tribunal, District Court, Karaikal. On such deposit, the appellants are permitted to withdraw their respective shares of 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 claimant. The share of the minor appellants are directed to be deposited in any one of the Nationalized Bank till the minor claimants attains majority. On such deposit, the first claimant being the



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mother of the minor claimants is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants. Since this Court has enhanced the compensation the appellants/claimants are directed to pay necessary Court fee on the enhanced 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 District Judge,
Motor Accident Claims Tribunal,
Karaikal.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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