



C.M.A.No.3017 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 01.02.2024

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

C.M.A.No.3017 of 2021

1.M.Rajalakshmi
2.P.Jagadeesan
3.M.Manimala

...Appellants

Vs.

1.Joseph
2.ICCI Lombard General Insurance Company Limited,
No.84/85, Arihant Plaza First Floor, Wall Tax Road,
Chennai – 600 001

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, to allow the present appeal award enhanced compensation in judgment and decree dated 07.04.2021 in M.C.O.P.No.2360 of 2018 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.II, Court of Small Causes), Chennai as prayed for in this Civil Miscellaneous Appeal with cost.

For Appellants : Mr.R.Nalliyappan

For Respondents : Mr.B.Siva Kollappan

No Appearance for R1



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JUDGMENT

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The above Civil Miscellaneous Petition is directed against the award and decree dated 07.04.2021 passed in M.C.O.P.No.2360 of 2018 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.II, Court of Small Causes), Chennai.

2. Shortly stated, on 11.03.2018 at about 15 hours, when the deceased was walking along the GST Road, Opposite to Tambaram Railways Station from West to East direction with due care and negligence. At the time, a motorcycle bearing Registration Number No.TN 10 BB 2759 came from South to North direction in a rash and negligent manner without following the traffic rules and regulations, dashed against the deceased. Due to which, the deceased sustained gregarious injuries and succumbed to the injuries while undergoing treatment at the Government Hospital on 15.03.2018. The accident occurred owing to rash and negligent riding of the motorcycle, thus the rider of the motorcycle is directly responsible for the gruesome accident. Hence, the legal heirs of the deceased claiming for compensation at Rs.20,00,000/- for the death of the deceased.



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3. The 1st respondent remained exparte before the trial Court.

4. In the counter affidavit filed on behalf of the 2nd respondent/Insurance Company, it is submitted that the accident occurred solely due to the carelessness and negligence on the part of the deceased. The deceased ought to have been cautious while walking on the main road and it is specifically denied that the motorcycle bearing Registration No.TN 10 BB 2759 came in a rash and negligent manner and dashed against the deceased. Hence, the 2nd respondent is not liable to compensate the petitioner herein for the negligence of the deceased.

5. Before the trial Court, on the side of the claimants P.W.1 to P.W.3 were examined and marked Ex.P1 to Ex.P11. No oral and documents were marked on the side of the respondents.

6. Based on the materials available on record, the trial Court, accordingly framed three points for consideration and came to the conclusion that the accident took place as alleged and claimants are entitled to claim compensation jointly and severally from the owner and driver of the offending



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vehicle. The compensation of Rs.4,51,000/- has been awarded carrying interest at the rate of 7.5% per annum. Aggrieved by this, the claimants have preferred the present appeal assailing the impugned order passed by the Tribunal.

7. Through this appeal, award has been challenged on the ground of just inadequate compensation alleging that the Tribunal failed to award a just compensation. The income of the deceased has not been fixed properly by the Tribunal. At the time of the accident, the deceased was working as cook and earning sum of Rs.15,000/- per month. However, the Tribunal has fixed the income at Rs.7,500/- which is inadequate. There is no dispute with regard to the manner of accident as alleged by the claimants. The findings of the Tribunal in this regard is confirmed. The dispute only with regard to the income of the deceased.

8. The learned counsel Mr.R.Nalliyappan appearing for the claimants would submit that the accident had taken place in the year 2018. At that point of time, the income for the deceased would certainly be higher than Rs.7,500/-. However, a meagre amount has been fixed as salary of the



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deceased by the Tribunal, which calls for interference.

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9. On the other hand, the learned counsel appearing for the respondent/Insurance Company would submit that the Tribunal has rightly fixed the income of the deceased and therefore, it does not require any interference. However, this Court found some substance in the contention made by the learned counsel appearing for the claimants that at the relevant point of time, the income of the deceased would be more than Rs.7,500/-. Hence, this Court finds that it would be appropriate to fix the income of the deceased at the rate Rs.12,000/- per month. However, the compensation on the other heads are confirmed.

10. The claims Tribunal has also recorded a finding that the deceased was 66 years of age at the time of accident. Since his monthly income is now fixed at Rs.12,000/- per month, the annual dependency after deduction $1/3^{\text{rd}}$ towards personal expenses is held to be Rs.96,000/- ($12 \times 12 \times 1/3$). After applying multiplier of 5 the compensation is calculated as Rs.4,80,000/- under the head of loss of dependency.



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11. The amounts awarded by the Tribunal under other heads are just and reasonable, which calls for no interference. 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	3,00,000/-	4,80,000/-	modified
2.	Loss of Consortium	40,000/-	40,000/-	confirmed
3.	Loss of Estate	15,000/-	15,000/-	confirmed
4.	Funeral Expenses	15,000/-	15,000/-	confirmed
5.	Loss of Parental Consortium	80,000/-	80,000/-	confirmed
6.	Medical Expanses	1,500/-	1,500/-	confirmed
	Total	Rs.4,51,500/-	Rs.6,31,500/-	enhanced by Rs.1,80,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,51,500/- is hereby enhanced to Rs.6,31,500 /- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the Court fee, if any on the enhanced amount of compensation. The second respondent/Insurance Company is directed to deposit the



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enhanced award amount now determined by this Court with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

01.02.2024

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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To

1. Motor Accident Claims Tribunal

(Special Sub Court No.II, Court of Small Causes), Chennai

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



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K.GOVINDARAJAN THILAKAVADI, J.

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