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C.M.A.No.2561 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2561 of 2022

1.Vengadasamy

2.Lagumamma

3.Lakshmi

4.Vengatalakshmi

5.Gangarathna

6.Rajeswari

7.Minor. Devaraj

[Minor appellant represented by his father,

1st appellant herein]

... Appellants / Petitioners

Vs.

1.MS The Correspondent,

ER Perumal Manimegalai College of Engineering,

Koneripalli, Hosur Taluk,

Krishnagiri District.

2.The Manager,

United India Insurance Co., Ltd.,

Branch Office, Sita Lakshmi Complex,

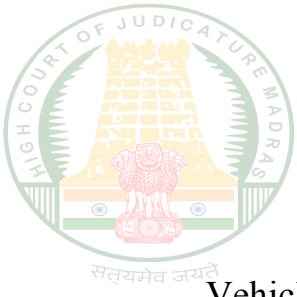
GST Road, Thirunagar,

Madurai – 625 006. Local Division Office at

Opp. To Railway Station,

Denkanikotta Road, Hosur- 635 109.

... Respondents / Respondents



C.M.A.No.2561 of 2022

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 22.09.2021 passed in M.C.O.P.No.257 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

For Appellants : Mr. S. P. Yuvaraj
For R1 : No appearance
For R2 : Mr. S. Arunkumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants seeking for enhancement of compensation awarded in M.C.O.P.No.257 of 2021, dated 22.09.2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

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

3. The case of the claimants is that the first and second petitioners are the father and mother of one Venkatraj, who was died in the motor vehicle accident. The other claimants are brothers and sisters of the said

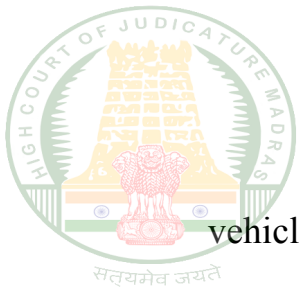


C.M.A.No.2561 of 2022

Venkatraj. On 10.11.2020 at about 18.30 hours, the deceased was crossing the road as pedestrian on the Hosur to Krishnagiri National Highways Road, at the time, a car bearing Registration No.TN 70 B 3760 belongs to the first respondent and insured with the second respondent was driven by its driver in a rash and negligent manner and hit on the deceased, caused severe injuries. Subsequently, he succumbed to the injuries. A criminal case was also registered against the driver of the car in Crime No.995/2020 under Sections 279 and 304 (A) of IPC on the file of the Soolagiri Police Station. The claimants have come forward with the Claim Petition claiming compensation for the sum of Rs.40 lakhs from the respondent by invoking Section 166 of the Motor Vehicles Act, 1988.

4. The owner of the vehicle was not contested the claim and was remained ex-parte. The Insurance Company contested the claim and disputed the negligence on the part of the deceased and also disputed the age, income, avocation of the deceased and also dependency of the claimants.

5. After considering the evidence placed on record, the Tribunal has accepted the case of the claimants that the driver of the first respondent



vehicle was responsible for the accident and that the respondents No.1 and 2 are liable to pay the compensation. The Tribunal has also quantified the compensation and awarded a sum of Rs.14,95,200/- payable to the claimants.

6. Aggrieved over the quantum of compensation awarded, this appeal has been filed by the claimants seeking enhancement of compensation.

7. The learned counsel for the claimants submitted that the deceased was working in the construction field as daily wager and the Tribunal has notionally fixed a sum of Rs.9,000/- as the income of the deceased without following the norms followed by this Court. He further submitted that the fixation of Rs.9,000/- as the income of the deceased is on the lower side hence prays to modify the same.

8. The learned counsel for the Insurance Company submitted that based on the evidence recorded before the Tribunal, the notional income of the deceased has been fixed and since the claimants in their evidence itself have stated that the deceased was earning a sum of Rs.5,000/- per month, further modification of the notional income of the deceased is not necessary



C.M.A.No.2561 of 2022

in this case. Hence prays to dismiss the appeal.

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9. I have considered the rival submissions made on both sides and also perused the records available.

10. On careful perusal of the evidence recorded on the side of the claimants and also the award passed by the Tribunal shows that P.W.1 who is the father of the deceased has admitted that his son was not working in the construction field and he was engaged as a daily wager in the agricultural activities. The deceased was earning a sum of Rs.5,00/- per day and he was not working during Saturdays and Sundays and for the remaining days, he worked. The evidence of P.W.1 further makes it clear that their case is that the deceased was working as an agricultural daily wager.

11. Based on this evidence, the Tribunal has fixed the notional income of the deceased at Rs.9,000/- per month. I am of the view that fixing of Rs.9,000/- per month for agricultural coolie, may not be appropriate however, since it is an admission on the part of the claimants i.e., earning Rs.500/- per day, fixing the notional income of Rs.11,000/- would be appropriate as per the Division Bench judgment of this Court in *Andal and*



C.M.A.No.2561 of 2022

others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]. Since

the deceased being a bachelor, the Tribunal has rightly deducted 1/2 towards his personal expenses. As per the Judgment of the Apex Court in *National Insurance Co. Ltd., vs. Pranay Sethi and other [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]* the Tribunal has rightly added 40% of monthly pay as future prospects. Since the age of the deceased is 30 years at the time of accident, the applicable multiplier is '17' as per the Judgment of the Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]*. Accordingly, the compensation awarded by the Tribunal under the head loss of income is modified to Rs.15,70,800/- [11000 + 4400 (40% of 11000) x 12 x 17 x 1/2].

12. I have also noticed that the claimants No.3, 4, 5 and 6 are the married sisters of the deceased in this case and I am of the view that the deceased was being a bachelor was living with his parents i.e., the claimants No.1 and 2 and the claimant No.7 is a minor who was also living with his parents. Hence the compensation is payable to the claimant Nos.1, 2 and 7 alone is proper. The other claimants are not entitled to claim compensation unless there is clear evidence in this regard that they are also dependants to



C.M.A.No.2561 of 2022

the income of the deceased who were living with her husbands.

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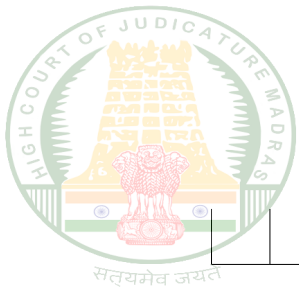
13. The Tribunal has not awarded proper consortium to the claimants.

As per the Judgment of the Hon'ble Apex Court in *Magma General Insurance Co. Ltd., vs. Nanu Ram and Others [2018 (18) SCC 130]* claimants No.1, 2 and 7 are entitled to get compensation of Rs.40,000/- under the head loss of consortium. Accordingly, a sum of Rs.1,20,000/- is awarded under the head loss of consortium.

14. As far as the other conventional heads such as Loss of Estate and Funeral Expenses are concerned, the Tribunal has rightly awarded Rs.15,000/- on each heads and there is no need for interference and the same are hereby confirmed.

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

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	Rs.12,85,200/-	Rs.15,70,800/-	Enhanced
2.	Loss of estate	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Loss of consortium	Rs.1,80,000/-	Rs.1,20,000/-	Modified
	Total Compensation	Rs.14,95,200/-	Rs.17,20,800/-	Enhanced to



C.M.A.No.2561 of 2022

Rs.2,25,600/-

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16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,95,200/- is hereby enhanced to Rs.17,20,800/- [Rupees Seventeen Lakhs Twenty Thousand and Eight Hundred 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 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.257 of 2021 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri. From the total compensation awarded, mother is entitled for 50% of compensation and remaining 50% shared by the father and claimant No.7 – minor Devaraj are entitled for 40% and 10% respectively. On such deposit, the appellants 1 & 2 are permitted to withdraw the amount now determined by this Court along with interest and costs, less the amount already withdrawn, if any, as per the apportionment fixed by the Tribunal. The share of the minor claimant is



C.M.A.No.2561 of 2022

directed to be deposited in any one of the Nationalised Bank till the minor claimant attains the age of majority and on such deposit, the first appellant being the father of the minor claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimant and if, he already attained the age of majority, his share amount may be dispersed. 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 compensation. In other aspects, the award of the Tribunal shall stands confirmed. There shall be no order as to costs in the present appeal.

21.12.2024

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.
2. The Section Officer,
V.R.Section,



High Court, Chennai.

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C.M.A.No.2561 of 2022

K. RAJASEKAR., J.

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C.M.A.No.2561 of 2022

21.12.2024