IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM :

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

C.M.A.No.3331 of 2021

1.Abdul Saleem

2.Rajitha Banu ... Appellants

Vs.

1.P.Baba Fakruddin Syed
(set exparte in M.C.O.P.No.273 of 2018 by order dt. 05.01.2010)

2.Shri Ram General Insurance Co. Ltd.,
No.135, A, 3rd Floor, 5th Cross,
Thillainagar, Trichy – 18.
(set exparte in M.C.O.P.No.273 of 2018 by order dt. 05.01.2010)

3.N.Alaudeen
(set exparte in M.C.O.P.No.273 of 2018 by order dt. 05.01.2010)

4.The Branch Manager,
M/s.United India Insurance Co. Ltd.,
No.50-A, Pallivasal Street,
Perambalur.
(set exparte in M.C.O.P.No.273 of 2018 by order dt. 05.01.2010)
... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.01.2021 and made in M.C.O.P.No.273 of 2018 and the file of Motor Accidents Claims

Tribunal Judge and Sessions Judge, Mahila Court, Perambalur and praying to set aside the same.

For Appellants : Ms.Sithi Fathima Samt
for M/s.C.Vidhusan

For Respondents : Ms.V.Pushpa [R2]
No appearance [R1, R3 & R4]

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JUDGEMENT

The above civil miscellaneous appeal is preferred against the award and decree dated 05.01.2021 passed in M.C.O.P.No.273 of 2018 on the file of the Motor Accident Claims Tribunal (Sessions Judge, Mahila Court), Perambalur by the claimants.

2. The case of the claimants is that, on 22.09.2017 the deceased Kadar Meera was travelling in the third respondent's TATA Magic Vehicle bearing Regn.No.TN-45-AT-7894 which was driven by its driver one Alaudeen. At about 04.00 p.m., when they were proceeding on Chennai – Trichy road from North to south, at the extreme left side of the road and were proceeding at the place near Alathur Taluk Office, the first respondent's lorry bearing Regn.No.AP-11-V-1267 was proceeding ahead in the right side of the above said TATA Magic vehicle which was driven by its driven in a rash and negligent manner with hectic and an uncontrollable speed and without

blowing horn and without obeying any traffic rules and regulations and without giving any signal and caution suddenly turned his lorry in the left side and dashed on the above said third respondent's TATA Magic vehicle and caused the accident. Due to the accident, the deceased sustained fatal injuries all over the body particularly in head, left shoulder and left leg and he died on the spot. After that, the corpse of the deceased was taken to the Government Hospital, Perambalur, where the post mortem was conducted by the Duty Medical Office. A case in Crime No.519 of 2017 u/s 279, 337 and 304(A) of IPC was registered against the driver of the first respondent's lorry by the Padalur Police Station. At the time of accident, the deceased was aged about 60 years and he was doing agriculture work and vegetable business thereby he earned not less than a sum of Rs.15,000/- per month. Hence, a sum of Rs.15,00,000/- was claimed as compensation for the death of the deceased.

3. Before the Tribunal, the respondents 1 to 4 remained *ex-parte.* Based on the averments made in the claim petition, the learned Tribunal formulated the following points for consideration :-

> (i) Whether the accident was on account of the rash and negligent driving of the first respondent's lorry driver bearing registration No.AP-11-V-1267 ?

(ii) Whether the petitioners are entitled to compensation from the 1 to 4th respondents? If so, to what extent ?

(iii) To what other relief the petitioners are entitled ?

4. The Tribunal came to the conclusion that the accident occurred due to the negligent act of the driver of the offending vehicle and assessed the compensation at Rs.5,05,200/-. Aggrieved by the quantum awarded by the Tribunal, the claimants have preferred the present appeal.

5. Ms.Sithi Fathima Samt, learned counsel appearing for the appellants/claimants would contend that at the time of accident, the deceased was an agriculturalist and vegetable vendor and was earning a sum of Rs.15,000/- per month. The Tribunal erred in fixing the monthly income as Rs.6,000/-. Her further contention is that, the Tribunal has adopted wrong multiplier and awarded a meager amount as compensation. She further submitted that, the claimants are the children of the deceased. Whileso, the Tribunal failed to award compensation under the head of loss of parental consortium. Hence, the compensation awarded by the Tribunal is very low and liable to be set aside.

6. Despite notice, respondents 1, 3 and 4 remained absent.

7. Ms.V.Pushpa, learned counsel appearing for the second respondent/insurance company would submit that, the Tribunal considering the material available on record, fixed the income of the deceased as Rs.6,000/- per month and there is no reason to interfere with the same. Her further contention is that, parental consortium can be awarded only to the children upon the premature death of a parent. In the present case, the claimants are grown up children of the deceased and therefore, they are not entitled for parental consortium. The Tribunal considering the above facts rightly declined to grant compensation under head of parental consortium, which requires no interference.

8. Heard the learned counsel appearing for the appellants and the learned counsel appearing on behalf of the second respondent and also perused the materials available on record.

9. With regard to manner of accident, the Tribunal has rightly concluded that the accident took place due to the negligent act of the driver of the offending vehicle. The said findings of the Tribunal is confirmed.

10. So far as the quantum of compensation is concerned, though the claimants have not proved the avocation and income of the deceased by letting in any tangible evidence, the same is not rebutted by the respondents. Moreover, the claimants have produced Ex.P.5, copy of registration certificate of vegetable shop. Considering the facts and circumstances of the case, this Court deems it appropriate to fix the income of the deceased at Rs.12,000/- per month. Therefore, by fixing a notional income of Rs.12,000/- and adding future prospects at 10%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** the total income per month is quantified at Rs.13,200/-. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.8,800/- per month and the deceased being aged about 60 years, as evidenced from the records, adopting the multiplier of 9 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income to the family is arrived at Rs.8,800/- * 12 * 9 = Rs.9,50,400/-, which is worked out as follows :-

Loss of Income	***Amount in Rs.***
Notional income (Per month)	12,000
Add: Future Prospects (Rs.12,000 x 10%) (Per month)	1,200
	13,200
Less: Personal expenses (1/3rd) (Rs.13,200/- x 1/3rd) (Per month)	4,400
	8,800
Notional income (per annum) (Rs.8,800/- x 12)	1,05,600
Multiplier	9
Total	**9,50,400**

11. Considering the fact that the claimants are the children of the deceased, they are entitled for a sum of Rs.15,000/- each as compensation under the head loss of love and affection.

12. In view of the above, this Court modifies the award of the Tribunal by enhancing the compensation, as under :-

S. No.	***Heads***	***Awarded by the Tribunal (Amount in Rs.)***	***Awarded by this Court (Amount in Rs.)***
1	Loss of dependency	**4,75,200/-**	**9,50,400/- (enhanced)**
2	Loss of Estate	15,000/-	15,000/-
3	Funeral Expenses	15,000/-	15,000/-
4	Loss of love and affection (Rs.15,000/- x 2)	**-**	**30,000/-**
	Total	**5,05,200/-**	**10,10,400/-**

13. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal is modified, enhancing the compensation amount from **Rs.5,05,200/-** to **Rs.10,10,400/-**. The second respondent/insurance company is directed to deposit the modified compensation amount to the credit of M.C.O.P.No.273 of 2018 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants as per the apportionment of the Tribunal, through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants/claimants. No costs.

28.03.2024

Index : Yes / No
Speaking order / Nonspeaking order
Neutral Citation Case : Yes / No
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To

1.The Motor Accidents Claims Tribunal Judge and Sessions Judge, Mahila Court, Perambalur.

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

K.GOVINDARAJAN THILAKAVADI, J.,

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