



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K. RAJASEKAR

C.M.A.No.3573 of 2021

1. Nathiya
2. Minor Dharani
3. Minor Kaviyarasu

... Appellants

Vs.

1. Kumar
2. The Superintendent of Police,
Erode District - 638 001.

... Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.11.2021 made in M.A.C.T.O.P.No.675 of 2019 on the file of the Motor Accident Claims Tribunal/Special District Court, Erode.

For Appellants : Mr.C.Paraneedharan

For R1 : No appearance

For R2 : No Appearance

J U D G M E N T



WEB COPY

This Civil Miscellaneous Appeal is filed by the claimants against the judgment and decree dated 11.11.2021 made in M.A.C.T.O.P.No.675 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode, seeking enhancement of compensation. The parties herein are referred as per their litigative status before the claims Tribunal.

2. The case of the claimants are that the first claimant is the wife and the 2nd & 3rd claimants are daughter and son of the deceased Paramasivam who died in an road accident on 14.02.2019. On 14.02.2019 at about 3:50 p.m. deceased Paramasivam was riding his two wheeler bearing Regn.No.TN 33 AF 2631 on the Coimbatore-Salem Bypass road after selling tender coconuts. While he was nearing Gangapuram road junction an Omni bus bearing Regn.No.TN 33 G 0672 came in the opposite direction driven by its driver in a rash and negligent manner and dashed against the two wheeler which resulted in causing severe injuries to him and he scummed. A criminal case was also registered against the deceased in Crime No.95/19 under Section 279, 337 of IPC on the file of the Chithedu Police Station. The claimants have come forward with the claim petition seeking compensation of Rs.25,00,000/- by invoking Section 166 of the Motor Vehicles Act.



WEB COPY3. The first respondent is the driver of the Van and the second respondent is the owner of the Van. The respondents have not filed any counter and remain exparte.

4. The Tribunal has initially assessed the evidence adduced on the side of the claimants and has held that the deceased died due to the negligent driving by the first respondent and the respondents are liable to pay the compensation of Rs.19,41,436/-. Aggrieved over the quantum of compensation, the claimants have approached this Court seeking enhancement of compensation.

5. The respondents have not filed any appeal against the award. The learned counsel appearing for the appellants submitted that the deceased was a Coconut seller and was earning Rs.15,000/- p.m. and the Tribunal has not properly appreciated the income claimed, evidence on record and the compensation awarded is on the lower side, hence prays to enhance the compensation.



6. Before the Tribunal the claimants were not able to prove the income of the deceased. However, the Tribunal had chosen to fix the income at Rs.10,000/- p.m. The evidence placed on record shows that the deceased was a Coconut seller but the claimants were not able to prove the income of the deceased. The deceased was 35 years old at the time of accident and considering the date of accident and age, this Court is of the view that the notional income fixed by the Tribunal is on the lower side and the same required to be modified. Accordingly, notional income of the deceased is fixed as Rs.14,000/- p.m. as per the norms followed by this Court, based on the date of accident and age of the deceased. The Tribunal has applied the correct multiplier as '16' and 40% of income towards future prospects. Accordingly, the loss of dependency arrived at after deducting 1/3rd of his monthly income towards personal and living expenses and thereby a sum of Rs.25,08,672/- {Rs.14,000/- + Rs.5,600/- (40% of Rs.14,000/-) - 19,600 X 1/3 = 13,066 x 12 X 16} can be awarded and the amount awarded by the Tribunal under other heads are just compensation and requires no interference.

7. 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 income	17,91,936/-	25,08,672/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of Parental consortium	80,000/-	80,000/-	Confirmed
5.	Loss of consortium	40,000/-	40,000/-	Confirmed
	Total	19,41,936/-	26,58,672/-	Enhanced

8. In the result, this Appeal is partly allowed. The compensation awarded by the Tribunal i.e., Rs.19,41,936/- is hereby enhanced to Rs.26,58,672/-. The 1st and the 2nd respondent are directed to deposit the modified award amount jointly or severally along with interest from the date of claim till the date of deposit and cost, after deducting the amount already deposited if any to the credit of MCOP.No.675 of 2019 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the respective shares of the award amount lying to the credit of MCOP.No.675 of 2019 to the bank account of the first Appellant through RTGS within a period of two weeks



thereafter. Since the second and third Appellants are minors, their respective shares of the award amount shall be deposited in fixed deposit in any one of the Nationalised Banks, till they attain majority and the first Appellant who is the mother for the minors is permitted to withdraw the interest once in six months. If the minors are attained the age of majority, it is open for them to file a formal petition to declare them as major. The Appellants/claimants are directed to pay requisite court fee, if any for the enhanced award. No costs.

23.02.2024

Index : Yes/No
Internet : Yes/No
dpq

K. RAJASEKAR, J.

dpq



WEB COPY

To

- 1.The Motor Accident Claims Tribunal/
Special District Court, Erode.
- 2.The Section Officer,
V.R.Section,
High Court, Chennai.

C.M.A.No.3573 of 2021

23.02.2024