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C.M.A.No.3398 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3398 of 2017

1. P. Seethalakshmi
2. P. Rithish
3.P. Devadharshini (Minor)
4. P. Madhushree (minor)
5. E. Yasodha
6. Elumalai
(Minors 2 to 4 are represented through their
mother / 1st petitioner herein)

... Appellants

..Vs..

1. C.S.Ganesh
2.Royal Sundaram Alliance Ins. Co.Ltd.,
Sundaram Towers, Building II floor,
No.1, Club House, Anna Salai,
Chennai -

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.07.2017 made in MCOP.No.4301 of 2013 on the file of the Motor Accident Claims Tribunal (II Judge, Small Causes Court, Chennai).

For Appellants

: Mr.K. Varadha Kamaraj



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For Respondents : Ms.C. Harini for R2.
for Mr.E.Rajadurai

JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 31.07.2017 passed by the II Judge, Small Causes Court, Chennai / Motor Accident Claims Tribunal, in MCOP.No.4301 of 2013.

2. The appellants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.

3. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of Dependency (Rs.25572 x 12 x15)	46,02,960/-
Love and affection	1,50,000/-
Consortium	1,00,000/-



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<i>Heads</i>	<i>Award Amount (Rs.)</i>
Funeral	25,000/-
Total	48,77,960/-

Rounded off to Rs.48,78,000/-.

4. The learned counsel appearing for the appellants has submitted that the judgment and decree of the Tribunal are against the law and facts, the evidence and probabilities of the case. He further submitted that the Tribunal has erred in fixing income of the deceased at Rs.2,92,250/- per annum. It ought to have fixed income of the deceased at Rs.4,00,900/- per annum as per I.T. Returns for the Assessment year 2012-2013. It erred in awarding Rs.46,02,960/- only towards pecuniary loss. It erred in not awarding any amount towards loss of estate. The Tribunal ought to have award just compensation under the above heads considering the rulings of the Apex Court. It ought to have allowed the claim as prayed for granting the compensation of Rs.2,64,00,000/-. He further submitted that in any event, the compensation awarded under the other heads are also very meagre and hence, he prayed for enhancement of compensation.

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5. The learned counsel appearing for the second respondent/ Insurance Company submitted that after considering the oral and documentary evidence on record, the Tribunal has awarded a just and reasonable compensation and therefore, the award passed by the Tribunal does not warrant any interference by this court.

6. As seen from the impugned award, the Tribunal has awarded 50% towards loss of future prospectus which is very high since the age of the deceased is 37 years at the time of accident as seen from Ex.P4/postmortem certificate. As per the decision of the Constitution Bench of the Hon'ble *Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others* reported in **2017 (2) TN MAC 609 (SC)**, 40% should be added towards "Future prospectus". Accordingly, this Court grants 40% towards loss of future prospectus to the appellants/claimants.

7. It is contended by the claimants that the deceased was running a business and was earning a sum of Rs.24,69,026/- per annum. However,



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the income tax return for the financial year 2012-2013 and 2013-2014 has been filed only on 10.02.2015 which is supposed to be filed within July 2012. The Tribunal has erroneously fixed the monthly income of the deceased as Rs.24,354/- and hence the same needs re-visit. The perusal of Exs.P7, P8 and P9 would reveal that the annual income of the deceased for the assessment years 2009-2010, 2010-2011, 2011-2012 are Rs.3,72,480/-, Rs.2,61,204 and Rs.3,38,092/- respectively. The average of annual income of IT Returns of 2009-2010, 2010-2011 and 2011-2012 is Rs.3,23,925/- and thus the monthly income of the deceased is arrived at Rs.26,993/- ($3,23,925/12$). The Tribunal has erroneously made a deduction of $1/3$ towards personal expenses. Therefore, proper deduction of one-fourth is to be adopted in the instant case. In this case, the deceased died as a family man. Therefore, this court is inclined to deduct $1/4^{\text{th}}$ of income towards personal expenses of the deceased. Thus, loss of dependency is calculated as $28,342 \times 12 \times 15 = 51,01,560/-$. Accordingly a sum of Rs.51,01,560/- is awarded towards " Loss of dependency ". Apart from this amount, the claimants 1 to 5 are entitled to Rs.40,000/- each towards " Loss of love and affection ". The 6th claimant is the father of the deceased but his name is not



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mentioned in the legal heir certificate and he is not considered as a dependent of the deceased. Similarly the award granted under the head of Funeral expenses at Rs.25,000/- seems to be on higher side and hence this court grants a sum of Rs.15000/- under the head of funeral expenses.

8. On perusal of records, it is seen that the Tribunal has granted compensation of Rs.1,00,000/- towards loss of consortium to the wife of the deceased. However, the compensation awarded by the Tribunal towards loss of consortium are high in the considered opinion of this Court. As per the settled practice, the compensation of Rs.1,00,000/- is modified to Rs.40,000/- towards loss of consortium; The Tribunal has erroneously failed to award any compensation towards loss of estate for which they are legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the appellants towards loss of estate since the age of the deceased is 37 years at the time of accident

9. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.48,77,960/- (Rounded off to Rs.48,78,000/-)



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to Rs.53,72,000/- as detailed hereunder.

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<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
Loss of Dependency	46,02,960/- (25572x12x15)	51,01,560/- (28342x12x15)
Love & affection	1,50,000/-	2,00,000/- (40,000 x 5)
Consortium	1,00,000/-	40,000/-
Funeral Expenses	25,000/-	15,000/-
Loss of Estate	NIL	15,000 /-
Total	48,77,960/-	53,71,560/-

Rounded off to Rs.53,72,000/-

10. In the result, this appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 9% per annum is confirmed. The second respondent/Insurance Company is directed to deposit the entire award amount of Rs.53,72,000/- along with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.4301 of 2013, within a period of six weeks from the date of receipt of a copy of this Judgment. The claimants are entitled to the



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enhanced award amount in the same ratio as apportioned by the Tribunal.

On such deposit being made by the Insurance Company, the Tribunal is directed to transfer the respective share amount along with accrued interest as per the order of this Court to the appellants 1 and 5/claimants 1 and 5 through RTGS within a period of two weeks thereafter. No costs.

11. On such deposit being made, the appellants 1 and 5 are permitted to withdraw their respective shares. Insofar as the minor claimants 2 to 4 are concerned, their share of enhanced award amount shall be deposited in any one of the Nationalised Banks till they attain majority and the first appellant/mother of the minor appellants 2 to 4 is permitted to withdraw the interest accrued once in six months.

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Index:Yes/No

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To

1. The IV Judge,
The Motor Accident Claims Tribunal
(II Judge, Small Causes Court, Chennai).

2. The Section Officer
V.R.Section, High Court of Madras.



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A.A.NAKKIRAN., J.
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