



CMA No.2131 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.04.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

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Pushpam alias Pushpa

... Appellant

Vs

1. M.Rajendran

2. The United India Insurance Co. Ltd.,
Micro Office at Shanmuga Complex,
1-15-24H New Edapadi Road, Sankari,
Salem -637 301.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 25.07.2017 in MCOP No.88 of 2016 passed by the Motor Accident Claims Tribunal (Special District Judge) Erode.

For Appellant : Mr.R.Nalliyappan

For Respondents : No appearance

J U D G M E N T

The sole appellant herein who is the mother of the deceased Shanmugasundaram has preferred this Civil Miscellaneous appeal against the Judgment and decree passed in M.C.O.P.No.88 of 2016, dated 25.07.2017 passed



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by the Motor Accidents Claims Tribunal / Special District Court for Motor Accident Claims cases, Erode for enhancement of compensation.

2. The claim petition was filed under Section 166 of the Motor Vehicle Act, by the appellant / claimant claiming compensation of Rs.30 lakhs on the death of her son Shanmugasundaram in the road accident that had taken place on 02.04.2016.

3. The learned counsel for the appellant / claimant would contend that the income of the deceased fixed by the Tribunal is on lower side, though monthly income details were established by examining P.W.3 who is the Director of the Elbrit Life Sciences (P) Ltd., where the deceased was working at the relevant point of time. According to the petitioner, while deciding income of deceased, deduction of 50% towards personal expenses is incorrect. The learned counsel would further contend that while calculating the monthly income of the deceased, future prospects was not added. It was further argued that no amount was awarded under the head - 'pain and sufferings' and 'for loss of estate'.

4. Per contra, the learned counsel for the Insurance Company would



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vehemently contend that the Tribunal after taking into consideration of oral and documentary evidence available on record, had passed the award for a sum of Rs.9,50,000/- with interest at 7.5% per annum from the date of filing of the petition till the date of realisation. It is well considered order which needs no interference by this Court.

5. Rival submissions of both side learned counsels are duly considered and perused the materials available on record.

6. The manner in which the accident had occurred is not in dispute. Before the Tribunal, in order to substantiate the averments made in the claim petition, P.W.1 to P.W.3 have been examined and Exs.P1 to P19 were marked on the claimant side. The respondents neither examined any witness nor produced any documents in support of their defence.

7. As per the evidence of P.W.1, at the time of accident, the claimant's son was aged about 32 years and he was working as a driver cum packer at Elbrit Life Science (P) Limited, Erode and he was earning a sum of Rs.20,000/- per month. To prove the income details of the deceased, the Director of the said company one Senthilkumar has been examined as P.W.3.



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Further it is evident that as per Ex.P15, the deceased was appointed as a driver cum packer in the said company with effect from 02.01.2014 for a monthly salary of Rs.15,000/- per month. He has also filed CST form B certificate of Registration of the said Company (Ex.P17). Though Exs.P15 and P19 have been marked through P.W.3, the Tribunal has not relied upon the same for want of acquittance and attendance Registrar being maintained in the said company in order to prove the factum that the deceased was employed in the said company. However, taking into consideration of the above said details it is reasonable to fix the salary of the deceased as Rs.10,000/-.

8. Insofar as the age of the deceased, Exs.P11 and P12 (driving licence and transfer certificate of the deceased) have been produced to state that the date of birth of the deceased is 17.05.1984. The Tribunal, based on the above said documents, fixed the age as 32 years at the relevant point of time, is correct. The corresponding multiplier is 16. However for the age group between 31 to 35 years, the Tribunal has to follow the law laid down in ***Sarala Verma & Ors. Vrs. Delhi Transport Corporation & Anr.*** reported in **2009 (2) TNMAC 1 (SC)** 16. In the said Judgment which is mentioned supra, the details of the deductions in respect of personal



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expenses have been given. As per the above Judgment, 50% has to be deducted towards personal expenses for the deceased who happens to be bachelor who is having a widowed mother. The Hon'ble Supreme Court has also held in the same Judgment about the addition of future prospects while calculating the income of the deceased.

9. Addition of Future Prospects is dealt with by the Hon'ble Supreme Court in *National Insurance Co. Ltd Vrs. Pranay Sethi and ors.* reported in **2017 (2) TNMAC 609 (SC)**, it has been held that in the case of persons who are aged below 40 years who were employed should be given an addition of 40 % as future prospects while calculating their income. Based on the aforesaid observations the following formula emerges for fixing the income of the deceased:

Monthly Income

Rs.10,000 / - + Rs.4000 / - (40%) = Rs.14,000 / -

Deduction of Personal expenses = 50%

Rs.14,000 / - - Rs.7000 (50%) = Rs.7000 / -

Annual Income

Rs.7000 / - x 12 x 16 (Multiplier) = Rs.13,44,000 / -

10. Therefore, the amount awarded under the head loss of earnings is enhanced from Rs.7,65,000 / - to Rs.13,44,000 / -. Insofar as the sum of Rs.10,000 / - awarded towards transport to hospital, a sum of Rs.25,000 / -



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awarded towards Funeral expenses and a sum of Rs.1,50,000/- awarded towards loss of love and affection, in the opinion of this Court is just and reasonable and the same do not warrant any interference. However, the Tribunal has not awarded any amount towards loss of estate. Therefore, a sum of Rs.25,000/- is hereby granted towards loss of estate. 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 earning	7,65,000	13,44,000	enhanced
2.	Transport to Hospital	10,000	10,000	confirmed
3.	Funeral expenses	25,000	25,000	confirmed
4.	Loss of love and affection	1,50,000	1,50,000	confirmed
5.	Loss of Estate	Nil	25,000	granted
	Total	9,50,000	15,54,000	Enhanced by Rs.6,04,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,50,000/- is hereby enhanced to **Rs.15,54,000 /- (Rupees Fifteen lakhs Fifty four thousand only)** together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is



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directed to pay the Court fee, if any on the enhanced amount of compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined 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. On such deposit, the appellant/claimant is permitted to withdraw the amount deposited on filing proper application. No costs.

21.04.2023

vum

Index: Yes/No

Speaking order / Non speaking order

To

1. The Motor Accident Claims Tribunal
(Special District Judge) Erode.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.



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R.KALAIMATHI, J.

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