

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.04.2017

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A. Nos.2867 and 2868 of 2016
and

C.M.P. Nos.20755/2016, 20756/2016,
5911/2017 and 5912/2017

Reliance General Insurance Company Ltd
Rai's Towers, 2nd Floor
Plot No.2054, 2nd Avenue
Anna Nagar, Chennai - 600 040

... Appellant in both
CMAs/2nd Respondent
in both Cases

Vs.

Respondents in C.M.A.No.2867 of 2016

1.S.Vasanthi
2.S.Aishwarya (Minor)
Rep by her mother and next friend
S.Vasanthi

...Respondents 1& 2/
Claimants

3.I.Sudhakar

...3rd Respondent/Ist
Respondent

Respondents in C.M.A.No.2868 of 2016

1.Kavitha
2.P.Prathiba (Minor)
3.P.Prathish (Minor)
(Minors rep by their mother and next friend
Kavitha)

4.A.Saroja
5.M.Arunachalam

...Respondents 1 to5/
Claimants 1 to 5

6.I.Sudhakar

...6th Respondents/Ist
Respondent

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the common judgment and decrees, dated 16.02.2016 made in M.C.O.P. Nos.1216 & 1400 of 2012, on the file of Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant in : Mr.S.Arunkumar
both CMAs

For Respondents : Mr.K.Suryanarayanan for
in both CMAs R1 & R2 in CMA No.2867/2016
for R1 to R5 in CMA No.2868/
2016

COMMON JUDGMENT
(Made by S.MANIKUMAR, J.)

In the accident, which occurred on 19.01.2012, about 15.30 hours, between a motorcycle bearing Registration No.TN-02 AQ-9992 and a car bearing Registration No.TN-22 BX-2077, the motorcyclist, Srinivasan, stated to be aged 45 years, a lathe operator, and Prem Anand, pillion rider aged about 42 years, Proprietor of Dynamic Engineering Works, and buyer and seller of industrial machines, Chennai, died. A case in Crime No.123/AM2/2012 has been registered on the file of Inspector of Police, A2 Adyar Traffic Investigation Police Station, Chennai, against the driver of the car.

2. Contending inter alia that the accident occurred due to the rash and negligent driving of the car bearing Registration No.TN-22 BX-2077, insured with Reliance General Insurance Co. Ltd, and on account of sudden death of the breadwinner, his family was put to irreparable loss, wife and minor son of deceased Srinivasan, filed MCOP No.1216 of 2012 on the file of Motor Accident Claims Tribunal (II Court of Small Causes), Chennai, claiming compensation of Rs.15,00,000/- under various heads.

3. Legal representatives of Prem Anand, namely, wife, two minor children and parents, filed MCOP No.1400/2012 on the file of the same Tribunal, claiming a compensation of Rs.1,50,00,000/- for the death of their breadwinner.

4. Reliance General Insurance Company Limited, filed separate counter affidavits to the claim petitions, denying the manner of accident. The company attributed negligence to the motorcyclist and consequently, disputed liability, to pay compensation. Without prejudice to the above, Insurance Company

has disputed the age, avocation, income of the deceased, and the quantum of compensation claimed under various heads.

5. As both the claim petitions arose out of the same accident, evidence being common, MCOP Nos.1216/2012 and 1400/2012 were taken up together and jointly tried. Wives of the deceased examined as PWs.1 and 2 respectively let in evidence, to support the claim, made by them. PW3 is stated to have witnessed the accident. PW4, father of Prem Anand, has adduced evidence. PW5 is an official from the Commercial Taxes Department. As many as 22 documents have been marked on the side of the claimants. They are Exs.P1-FIR Copy, P2-Rough sketch, P3-Charge Sheet, P4-Postmortem Certificate of Srinivasan, P5-Death certificate, P6-Legal heirship certificate, P7-Postmortem report of Prem Anand, P8-Death Report, P9-Death Certificate, P10-Legal heirship certificate, P11-VAT Registration certificate of Dynamic Engineering Works, P12-Machine purchase bills, P13-Attendance Register, P14-Wage Register, P15-Bank statement of the company, P16-PAN card of deceased Prem Anand, P17-Authorisation Letter, P18-Registration Certificate of Dynamic Engineering Works, P19-Tax details paid by the deceased Prem Anand, P20-Cancellation Certificate of Dynamic Engineering Works, after death, P21-Bill/Invoice book of Dynamic Engineering Works and P22-Income Tax returns filed by the deceased Prem Anand. On the side of the insurance company, no oral or documentary evidence, has been adduced.

6. Having regard to the testimony of PWs.1 and 2, duly corroborated by Ex.P1 - FIR, Ex.P2 - rough sketch, Ex.P3 - Charge sheet and supported by PW3, eyewitness, the Motor Accident Claims Tribunal observed that the evidence was cogent, coherent and convincing. Evidence adduced by the claimants was also found to be unshakable. On the contra, there was no rebuttal evidence. In the light of the above, the Tribunal came to the conclusion that the accident occurred, solely due to the rash and negligent driving of the car bearing Registration No.TN-22 BX-2077 and insured with Reliance General Insurance Co. Ltd. and consequently, fastened liability.

7. On the basis of entry in Ex.P4 - Postmortem certificate of Srinivasan, the Tribunal has fixed the age of Srinivasan as 45 years. PW1, wife of Srinivasan, has deposed that, at the time of accident, deceased as Lathe operator in a private company, Ambattur, Chennai, earned Rs.20,000/- per month. He is survived by wife and minor son. Accepting the avocation and in the absence of any proof of the income, but taking note of the year of accident, the Tribunal fixed the monthly income of the deceased as Rs.10,000/-. Based on the decision of the Hon'ble Supreme Court in Santhosh Devi vs. National Insurance Company Ltd reported in 2012 (2) TN MAC 1(SC), the Tribunal added 30% of

the income, under the head future prospects and arrived at a sum of Rs.13,000/- as monthly income for the purpose of computing the loss of contribution to the family. Taking note of the age of the deceased, at the time of accident, the Tribunal applied '14' multiplier. From the sum arrived at, the Tribunal deducted 1/3rd towards personal and living expenses of the deceased and computed the loss of contribution to the family, as Rs.14,56,056 (Rs.13,000/- - 1/3rd = Rs.8667/- x 12 x 14).

8. Following the decision of the Hon'ble Supreme Court in *Rajesh and others v. Rajbir Singh and others* reported in 2013 (2) TNMAC 55 SC, the Tribunal awarded a sum of Rs.1,00,000/- to the wife, under the head loss of consortium. A further sum of Rs.2,00,000/- has been awarded under the head loss of love and affection to the minor child. In addition to the above, the Tribunal has awarded Rs.25,000/- for funeral expenses, and Rs.50,000/- under the head loss of estate. Altogether, the Tribunal has awarded a sum of Rs.18,31,056/- with interest at the rate of 7.5% per annum from the date of claim till deposit and costs.

9. Insofar as the claim in MCOP No.1400/2012 is concerned, legal representatives have contended that deceased Prem Anand was running a business in the name and style of Dynamic Engineering Works, with a permanent Registration Certificate issued by General Manager, District Industries Centre, Tiruvallur. PW2, wife has deposed that, at the time of accident, her husband was aged 41 years, and was the Proprietor of Dynamic Engineering Works. She has further deposed that he was also engaged in buying and selling of industrial machines she claimed monthly income of the deceased, as Rs.80,000/-. Based on the entry in Ex.P7-Postmortem certificate, the Tribunal fixed the age of the deceased as 42 years. Considering Ex.P11 - Registration Certificate issued by the General Manager, District Industries Centre, Tiruvallur, Ex.P12 (series) - Purchase bills, Ex.P13 - Attendance Register, Ex.P14 - Wage Register, Ex.P15 - Bank statement of the company, Ex.P16 - PAN card of the deceased, Prem Anand, Ex.P17 - Authorisation letter, Ex.P18 - Registration Certificate of Dynamic Engineering Works, Ex.P19 - Details of Tax paid by the deceased, Ex.P20 - Dynamic Engineering Works cancellation certificate, Ex.P21 - Bill/Invoice Book, Ex.P22 - Income Tax returns marked on the side of the respondents/claimants, and going through the entries in the above documents, and in particular, turnover between 2009 - 2012 and the oral testimony of PW5, an official from the Commercial Taxes Department, the Tribunal, came to the conclusion that the deceased would have earned a sum of Rs.25,000/- per month. Thereafter, following the decision in *Santhosh Devi vs. National Insurance Company Ltd.* reported in 2012 (2) TN MAC 1(SC), Tribunal added 30% of the income, under

the head future prospects. As the number of dependents were five, the Tribunal deducted 1/4th towards personal and living expenses of the deceased and arrived at a sum of Rs.24,375/- as monthly income. Following the decision of a Hon'ble Division Bench of this court in Managing Director, Tamil Nadu State Transport Corporation vs. Clara Jeyamani and others reported in 2015 (2) TN MAC 1 (DB), the Tribunal deducted 10% of the income, as income tax liability, and computed Rs.21,937.50, as loss of monthly income to the family. At the time of accident, the deceased was aged 42 years. As per the decision of the Hon'ble Supreme Court in Smt.Sarla Verma and others vs. Delhi Transport Corporation and another, reported in 2009 (2) TN MAC 1 (SC), the Tribunal applied '14' multiplier and computed the loss of contribution to the family as Rs.36,85,500/- (Rs.21,937.50 x 12 x 14). Added further, the Tribunal has awarded Rs.1,00,000/- as loss of consortium to wife, Rs.4,00,000/- under the head loss of love and affection to the minor children and parents, Rs.25,000/- for funeral expenses and Rs.1,00,000/- for loss of estate. Altogether, the Tribunal has awarded a compensation of Rs.43,10,000/- with interest @ 7.5% per annum from the date of claim till deposit and costs.

10. Being aggrieved by the quantum of compensation awarded in both the cases, Reliance General Insurance Company Ltd, Chennai, has filed two appeals in C.M.A.No.2867/2016 against MCOP No.1216/2012 and C.M.A.No.2868/2016 against MCOP No.1400/2012.

11. On the aspect of quantum of compensation awarded in MCOP No.1216/2012, Mr.S.Arun Kumar, learned counsel for Reliance General Insurance Company Ltd/appellant herein, submitted that the Tribunal has erred in awarding excess compensation of Rs.18,31,000/-, by determining the monthly income of the deceased, without any proof of income. He also submitted that a sum of Rs.2,00,000/- awarded under the head loss of love and affection, is on the higher side. Compensation of Rs.50,000/- awarded under the head loss of estate is also questioned.

12. Insofar as MCOP No.1400/2012 (CMA No.2868/2016) is concerned, Mr.S.Arun Kumar, learned counsel for the appellant/insurance company, submitted that the Tribunal erred in determining the monthly income of the deceased as Rs.25,000/- solely based on the Turn over details of the company run by the deceased, for the period between 2009 - 2010 to 2011 - 2012. He further submitted that, according to him, Turnover details, taken note of by the Tribunal, would not reflect the actual profit earned by the Proprietorship concern. It is also his contention that Income Tax Returns have been filed only for the Assessment Years 2005 - 2006, 2006 - 2007 and 2007 - 2008 and when the accident occurred on 19.01.2012, nothing prevented the

legal representatives of the deceased Prem Anand, to file Income Tax Returns, prior to death in proximity, to prove that there was increase, in the income of the deceased. According to him, business has ups and downs. May be there was progress in business, but proof of income, prior to death is required. According to him, as Tax Returns after 2007 - 2008 have not been filed, inference can be made that there was progress in the business. Referring to Ex.P15 - company bank statement, learned counsel for the appellant herein/insurance company, further submitted that bank statement also did not reflect profit of the company, though it was contended that deceased was engaged in buying and selling of industrial machines. In sum and substance, it is the submission of the learned counsel for the insurance company/appellant herein, that fixing a sum of Rs.3,00,000/- as annual income, taking note of the Turn over, requires reduction.

13. According to the learned counsel, having regard to the abovesaid documents, that at the time of accident, deceased would have earned a monthly income ranging between Rs.12,000/- to Rs.15,000/- and therefore, prayed this court to compute the loss of contribution to the family accordingly. He submitted that Rs.4,00,000/- awarded under the head loss of love and affection is on the higher side. According to him, Rs.1,00,000/- awarded under the head loss of estate, has to be interfered with.

14. By inviting the attention of this court to the three years Income Tax Returns stated supra, Mr.K.Suryanarayanan, learned counsel for the legal representatives/respondents submitted that in the Assessment year 2005 - 2006, income of the Proprietor was Rs.1,06,781; in the year 2006 - 2007, it was Rs.1,61,872/- and for the Assessment year 2007-2008, income of the Proprietor was Rs.1,68,470/-. Turnover details and tax paid details for the assessment year 2009 - 2010 to 2011 - 2012, are as follows:

YEAR	TURNOVER	TAX PAID BY DECEASED
April 2009 to March 2010	Rs.4,05,000/-	Rs.16,200/-
April 2010 to March 2011	Rs.7,65,000/-	Rs.30,600/-
April 2011 to March 2012	Rs.7,36,682/-	Rs.36,437/-

Learned counsel for the respondents further submitted that Dynamic Engineering Works Company was registered on 16.05.1996 and accordingly, Ex.P18 - Registration certificate has been issued by the General Manager, District Industries Centre, Chennai. He also submitted that, besides manufacturing activity,

deceased was also engaged in sale of goods, for which, he had paid Value Added Tax. Taking this court through the turnover and tax paid, for the period between April 2009 to March 2012, learned counsel for the respondents/legal representatives of the deceased further submitted that unless and until, there is substantial business transaction involving sale of goods, Value Added Tax is not required to be paid by an assessee. Having regard to the gradual increase of the turnover between April 2009 and March 2012, Mr.K.Suryanarayanan, learned counsel for the respondents/legal representatives submitted that the abovesaid fact would itself indicate that dealership business was in progress. According to him, deceased was simultaneously engaged in buying and selling of industrial machines, and determination of monthly income as Rs.25,000/-, cannot be said to be excess. In support of the above contention, he has also referred to the fact that the deceased, had maintained an Attendance Register and Wage Register, to prove employment of workers and payment of wages to them.

15. Inviting attention of this court to the oral and documentary evidence, Exs.P11 to P22 and also testimony of PW5, an official, from the Commercial Taxes Department, learned counsel for the respondents/legal representatives of the deceased, submitted that there cannot be any doubt over the avocation of the deceased and gradual increase, in the annual income between 2004 - 2005 to March 2012, reflected in the increase in turnover and submitted that the deceased, cannot be expected to have earned a lesser income than what he was earning in the previous years. Considering the evidence adduced, he submitted that the Tribunal has not committed any error, in determining the monthly income as Rs.25,000/-. On the aspect of excess compensation under the head loss of love and affection, loss of estate, learned counsel for the respondents/legal representatives of the deceased, Prem Anand prayed, to sustain the compensation awarded under the head loss of love and affection and loss of estate, respectively.

Heard the learned counsel for the parties and perused the materials available on record.

16. Insofar as CMA No.2867/2016 (MCOP No.1216/2012) is concerned, deceased Srinivasan is survived by wife and minor son. They claimed that at the time of accident, their breadwinner was a Lathe Operator in a private concern, Ambattur, Chennai and earned Rs.20,000/- per month. Though no document has been produced, judicial notice can be taken note of that Ambattur Industrial Estate, is the biggest Small Scale Industrial Estate in South Asia and it houses thousands of industrial Units. Judicial notice can also be taken note of that getting employed in an industrial area may not be difficult.

Though Rs.20,000/- was claimed as the monthly income, the Tribunal has fixed the same, as Rs.10,000/-. Accident has occurred on 19.01.2012. To provide food, shelter, clothing and other amenities, one may require a reasonable amount. Having regard to the avocation pleaded, Rs.10,000/- fixed as monthly income, cannot be said to be on the higher side. Addition of Rs.3,000/- towards future prospects also cannot be said to be erroneous and in our view, duly supported by the decision of the Hon'ble Supreme Court in Santhosh Devi vs. National Insurance Company Ltd. reported in 2012 (2) TN MAC 1(SC). Having regard to the number of dependents, the Tribunal has deducted 1/3rd of the income towards personal and living expenses of the deceased. In our view, the methodology adopted by the Tribunal in computation of loss of contribution to the family, cannot be said to be erroneous. Wife has lost her consortium. Rs.1,00,000/- awarded under the said head is duly supported by the decision of the Hon'ble Supreme Court in Rajesh and others v. Rajbir Singh and others reported in 2013 (2) TNMAC 55 SC.

17. Contention that the Tribunal has erred in awarding excessive compensation of Rs.2,00,000/- to the wife under the head loss of love and affection, appears to be acceptable. A sum of Rs.1,00,000/- has also been awarded under the head loss of consortium. 'Consortium', as per Best v. Samuel Fox reported in (1952) AC 716, means, "Duty owed by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc.". Consortium is not a pecuniary loss. It is certainly a conventional damage awarded to a widow, who has lost her husband. In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Hon'ble Apex Court, while observing that at least a sum of Rs.1 Lakh has to be awarded to the widow, for loss of consortium, held as follows:

"In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance,

protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast Rupees one lakh for Loss of Consortium."

In the light of the decisions of the Hon'ble Supreme Court cited supra, a sum of Rs.1,00,000/- awarded to the wife under the head loss of love and affection is superfluous and, therefore, it is reduced.

18. Rs.1,00,000/- awarded as compensation to the child under the head loss of love and affection is sustained. Rs.25,000/- awarded under the head funeral expenses is also just and reasonable. The Tribunal has not awarded any compensation under the head transportation and damages to clothes. Hence, we deem it fit to award a sum of Rs.10,000/- as compensation for transportation and a further sum of Rs.2,000/- under the head damages to clothes and articles.

19. The question remains to be considered as to whether Rs.50,000/- awarded under the head loss of estate, is excessive or not. Loss of estate is explained in Omana vs. Francis Edwin reported in 2012 ACJ 1765 and Perumal and others v. G.Ellusamy Reddiar (Madras) (D.B.) reported in 1974 ACJ 182. Having regard to the above said judgments, we are of the view that a sum of Rs.25,000/- as compensation under the head loss of estate, would be just and reasonable. Hence, under the said head loss of estate there will be a reduction of Rs.25,000/-.

20. After re-working, compensation due and payable to the respondents in C.M.A.No.1867/2016 (M.C.O.P.No.1216/2012) is as follows:

Loss of contribution to the family	: Rs.14,56,056
Loss of consortium	: Rs. 1,00,000
Loss of love and affection	: Rs. 1,00,000
Funeral expenses	: Rs. 25,000
Loss of estate	: Rs. 25,000
Transportation	: Rs. 10,000
Damage to clothes and articles	: Rs. 2,000

	: Rs.17,18,056
Rounded off to	: Rs.17,18,000
Compensation awarded by the Tribunal	: Rs.18,31,000

Compensation re-worked in CMA	: Rs.17,18,000

Reduction	: Rs. 1,13,000

21. Insofar as determination of monthly income of the deceased Prem Anand, a dealer and also Proprietor of Dynamic Engineering Works, it could be seen from Ex.P18 - Permanent Registration Certificate issued by the General Manager, District Industries Centre, that the deceased Prem Anand was the Proprietor. Dynamic Engineering Works, has been registered for doing job work on machining. It has obtained CST VAT Registration on 06.10.2008. In the VAT Registration certificate, name of the Proprietor is shown as A.Prem Anand. Ex.P19 shows details of VAT paid. Turnover and payment of VAT details are extracted.

Financial Year	Turn Over	Tax Paid
2009 - 2010	Rs.4,05,000/-	Rs.16,200/-
2010 - 2011	Rs.7,65,000/-	Rs.30,600/-
2011 - 2012	Rs.7,38,662/-	Rs.36,437/-

22. It could be seen from the VAT details that Dynamic Engineering Works has achieved a turnover of Rs.4,05,000/- between April 2009 and March 2010, and the same is increased to Rs.7,65,000/- between April 2010 and March 2011 and more or less remained the same, as Rs.7,38,682/- between April 2011 and March 2012. Thus from the turnover details from April 2009 to March 2012, it could be deduced that the business of Dynamic Engineering Works has increased gradually. Correspondingly, tax has been paid.

23. It could be seen from Ex.P12 (series) - Purchase bills, Dynamic Engineering Works, Chennai, has purchased an used shaping machine from Kiran Machineries. Dealers in all kinds of tool room, engineering and plastic injection moulding machines, lathe machines used (old) from S.M.Industries, Bangalore, used press brake machines from Kiran Machineries, some cutting machines and parts from R.M.Engineering Works. Several bills have been produced.

24. Bank statement details, are as follows:

Period	Opening Balance (Rs.)	Withdrawals (Rs.)	Deposits (Rs.)	Balance (Rs.)
01.01.2011 to 31.01.2011	3,68,819.26	13,65,714.24	8,08,050.00	1,88,844.98
01.02.2011 to 28.02.2011	1,88,844.98	2,25,528.92	2,46,875.90	1,67,498.00
01.03.2011 to 31.03.2011	1,67,498.00	1,76,790.05	5,70,000.00	2,25,711.95
01.04.2011 to 30.04.2011	2,25,711.95	3,02,485.50	3,08,607.90	2,31,834.25
01.05.2011 to 31.05.2011	2,31,834.25	59,350.22	0.00	1,72,484.03
01.06.2011 to 30.06.2011	1,72,484.03	46,670.00	89,785.80	2,15,599.83
01.07.2011 to 31.07.2011	2,15,599.83	3,34,595.00	48,670.50	70,324.67
01.08.2011 to 31.08.2011	70,324.67	1,89,688.00	93,819.20	1,66,193.47
01.09.2011 to 30.09.2011	1,66,193.47	24,942.78	45,000.00	1,46,136.25
01.10.2011 to 31.01.2011	1,46,136.25	5,35,849.15	5,02,000.00	1,79,985.40
01.11.2011 to 30.11.2011	1,79,985.40	3,92,028.08	4,01,332.00	1,70,681.48

From the perusal of bank statements of M/s.Dynamic Engineering Works, Chennai issued by ICICI Bank, it could be seen that a sizable amount has been kept, as balance in the bank account of M/s.Dynamic Engineering Works.

25. For the Assessment Year 2005 - 2006, Prem Anand, deceased had submitted Income Tax Returns showing the income as

Rs.1,06,781. For the Assessment year 2006-2007, he had shown income as Rs.1,61,872/-. For the year 2007-2008 he had declared the income as Rs.1,68,470/-. Here again, it could be seen that there is an increase of income from 2005 - 2006 to 2007 - 2008. True that the legal representatives of the deceased have not produced any Income Tax Returns after the Assessment Year 2007 - 2008. But the fact remains that from April, 2009, onwards, there is an increase in the turnover of Dynamic Engineering Works company and accordingly, VAT has been paid. Periodical increase in turnover indicates growth in business. It is also to be noted that the deceased was the Proprietor of Dynamic Engineering Works, registered on 17.05.1996 for the purpose of machining on job work. In addition, legal representatives of the deceased have also produced Attendance Register and Wage Register containing details of the employees engaged in Dynamic Engineering Works and salary paid to them. Unless and until technically qualified persons are employed, an Engineering Works company cannot carry on the work for which it was registered. Perusal of the income and expenditure details submitted along with the Income Tax returns also indicate that salary has been paid to the employees. Registration of Dynamic Engineering Works has been cancelled with effect from 03.10.2012 after the accident which occurred on 19.01.2012.

26. From the above entries in the documents stated supra, it could be deduced that Dynamic Engineering Works was registered on 17.05.1996. VAT Registration was done on 06.10.1998. There had been purchase of machines. Turnover of the company has been periodically increased. Income Tax Returns also show periodical increase in income. Merely because Income Tax Returns have not been filed before the Tribunal from 2008 onwards, it cannot be said that the business run into loss and that is why the legal representatives have not submitted the Income Tax Returns and that therefore annual income of Rs.3,00,000/- fixed in the year 2012 is on the higher side. There could be many reasons as to why Income Tax Returns have not been submitted. That alone is not a determinative factor to accept the contention of the insurance company that the income should be between Rs.12,000/- to Rs.15,000/- per month. Even in the year 2008, the deceased had income of more than 14,000/- rupees. Income shown for the Assessment year 2007 - 2008 was Rs.1,68,470/-. The question arises for consideration is whether the income could be doubled in a span of five years between 2007 - 2008 and 19.01.2012, the date of accident. Considering the cumulative effect of the documentary evidence, extracted supra, we are of the view that the company started in the year 1996, carried on up to 2012, had shown a gradual increase in the turnover, payment of tax, and that there should be an upward revision in the income of the Proprietor also and that therefore a sum of Rs.25,000/-, fixed as monthly income, cannot be said to be higher, without any

basis. At this juncture, it is also to be noted that the Tribunal has failed to consider as to whether any addition should not be made under the head future prospects.

27. As per the income tax returns, in the year 2007 - 2008, his monthly income was above Rs.14,000/- (I.T. Return Rs.1,68,470/-) considering the turnover details, assuming that there would be an average increase of income of Rs.2,000/- per month, in the years 2008-2009 and 2010-2011, he would have earned Rs.20,000/- per month. If addition of 50% of the income, is added under the head future prospects, income for the purpose of computation of loss of contribution would be more.

28. For the reasons stated supra, we are not inclined to accept the contention of the appellant herein, on the aspect of determination of monthly income and loss of contribution to the family. However, we agree with the contention of Mr.S.Arun Kumar, learned counsel for the insurance company that compensation of Rs.4,00,000/- awarded under the head, love and affection to the two minor children and parents is slightly excessive. At the time of accident, children were aged 13 and 4 years respectively. Considering the loss of love of affection, it could be just and reasonable to award a sum of Rs.1,00,000/- each, to the minor children. Instead of Rs.1,00,000/- each, parents are awarded compensation of Rs.50,000/- each. Thus, there will be a reduction of Rs.1,00,000/- from the component love and affection. Similarly, compensation of Rs.1,00,000/- under the head loss of estate is on the higher side. The same is reduced to Rs.25,000/-. There is no award for transportation. Hence a sum of Rs.10,000/- is awarded under this head. Similarly, the Tribunal has not awarded any amount towards damage to clothes and articles. Hence, we deem it fit to award a sum of Rs.2,000/- under the said head. In view of the reworking, compensation due and payable to the legal representatives/respondents works out to Rs.41,48,000/-.

29. After re-working, compensation details are as follows:

Loss of contribution to the family	: Rs.36,85,500
Loss of consortium	: Rs. 1,00,000
Loss of love and affection	: Rs. 3,00,000
Funeral expenses	: Rs. 25,000
Loss of estate	: Rs. 25,000
Transportation	: Rs. 10,000
Damage to clothes and articles	: Rs. 2,000

	: Rs.41,47,500
Rounded off to	: Rs.41,48,000
Compensation awarded by the Tribunal	: Rs.43,10,000

Compensation re-worked in CMA	: Rs.41,48,000

Reduction	: Rs. 1,62,000

30. In C.M.A.No.2867/2016 (MCOP No.1216/2012), compensation awarded by the Tribunal to the legal representatives of Srinivasan, is Rs.18,31,000/-. On appeal, compensation now determined by this court is Rs.17,18,000/-. There will be a reduction of Rs.1,13,000/-.

31. In C.M.A.No.2868/2016 (MCOP No.1400/2012), compensation awarded by the Tribunal to the legal representatives of Prem Anand, is Rs.43,10,000/-. On appeal, compensation now determined by this court is Rs.41,48,000/-. There will be a reduction of Rs.1,62,000/-.

32. Learned counsel for the appellant submitted that insofar as C.M.A. No.2867/2016 (MCOP No.1216/2012) is concerned, the entire award amount with proportionate interest and costs, has been deposited to the credit of MCOP No.1216/2012 on the file of Motor Accident Claims Tribunal (II Court of Small Causes), Chennai. Reduction of compensation will be from the share apportioned to the wife. She is permitted to withdraw the balance apportioned to her with proportionate interest. The share of the minor shall be deposited in any one of the Nationalised Banks under reinvestment scheme, proximate to the residence of the first respondent and renewable thereafter. Respondent No.1/mother of the minor child is permitted to withdraw interest once in three months, till the minor child attains majority.

33. Insofar as C.M.A. No.2868/2016 (MCOP No.1400/2012) is concerned, learned counsel for the appellant submitted that 50% of the award amount with proportionate interest and costs, has been deposited to the credit of MCOP No.1400/2012 on the file of Motor Accident Claims Tribunal (II Court of Small Causes), Chennai. Reduction of compensation will be from the share apportioned to the wife. The share of the minors shall be deposited in any one of the Nationalised Banks under reinvestment scheme, proximate to the residence of the minor children and renewable thereafter. Respondent No.1/mother of the minor children is permitted to withdraw interest once in three months, till the minor children attain majority. 1st respondent/wife and parents of the deceased are permitted to withdraw the balance apportioned to them with proportionate interest.

34. Both the civil miscellaneous appeals and C.M.P.No.5911/2017 in C.M.A.No.2867/2016 and C.M.P.No.5912/2017 in C.M.A.No.2868/2016 are allowed in part. However, there shall be no order as to cost. Consequently, other CMPs are closed.

-s/d-
Assistant Registrar(CSVII)

True Copy

Sub-Assistant Registrar

asr

To

The Motor Accident Claims Tribunal
(II Court of Small Causes), Chennai

+1 cc to Mr.S.Arunkumar Advocate sr 23440

+2 ccs to Mr.K.Suryanarayanan Advocate sr 23660 & 23661

C.M.A. Nos.2867 & 2868 of 2016
and
C.M.P. Nos.5911 & 5912 of 2017
and
C.M.P. Nos.20755 & 20756 of 2016

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