

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated: 20.04.2018****Coram****The Honourable Mr. Justice S.BASKARAN****Civil Miscellaneous Appeal No.19 of 2014**

1.S.Kalaivani
2.R.Sukumaran(deceased) ... Appellant

..VS..

1.T.Rajakumar
2.New India Assurance Co. Ltd.,
No.375, Anna Salai,
Canara Bank II Floor,
Saidapet, Chennai-600 015. ... Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decretal order dated 07.06.2012 made in MCOP.No.723 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge and Special Judge for EC Act Cases, Salem.

For Appellants : Mr.C.Kulanthaivel

For Respondent : Mr.J.Chandran for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 07.06.2012 made in MCOP.No.723 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge and Special Judge for EC Act Cases, Salem, the petitioners/claimants have come forward with this present appeal seeking to enhancement of the award amount.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 17.02.2008 at about 07.30 a.m., the deceased was travelling as pillion rider in a Motor cycle bearing Registration No.TN-09-AH-2048, near Kattiampandal bridge in Uthiramerur, due to the rash and negligent driving of the two wheeler by its rider Rajulu, the two wheeler dashed against the tree on the road side resulting in the death of both the persons. The accident occurred only due to the rash and negligent driving by the two wheeler rider only. As the owner and insurer of the vehicle, the respondents are liable to pay compensation. The deceased was aged about 22 years at the time of accident and the petitioners are his parents. The

deceased was P.G. student and if he has lived, he would have earned lot of money and taken care of his parents/the petitioners herein. Hence, the petitioners sought for a sum of Rs.20,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent-Insurance Company filed counter contending that the accident does not occur in the manner alleged by the petitioners. Even though, the rider of the two wheeler was going at normal speed, the deceased who was travelling as a pillion rider fell down from the motor cycle due to his negligence suffered injuries and died on the spot. Hence, the deceased contributed to the accident. The claim of the petitioners about the age and status of the deceased is not admitted. The claim of the petitioners is exorbitant. Thus, the second respondent sought for dismissal of the claim petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P18 to substantiate their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on the basis of available evidence on record, found the negligence of the first respondent two wheeler rider alone caused the accident and awarded a sum of Rs.4,37,000/- as compensation. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have come forward with the present appeal.

7. The learned counsel appearing for the appellants/Petitioners contends that the Tribunal failed to appreciate the evidence on record properly. The documents produced as Ex.P5 to Ex.P18 clearly prove the deceased was a bright student and considering the same, the Tribunal ought to have fixed the notional income of the deceased much higher than Rs.3,000/- per month fixed by it. The future prospects were not considered properly. The amount awarded by the Tribunal under the different heads are very nominal. Thus, the petitioners sought for enhancement of the award amount by entertaining the appeal.

8. Per contra, the learned counsel appearing for the second respondent-Insurance Company contends that the deceased being a student, it is only on presumption that he will earn much in future, the notional income is sought to be fixed, and as such the Tribunal

correctly fixed the amount as monthly income and there is no need to enhance the same. The Tribunal has passed just and fair award and no ground is made out to enhance the same. Thus, the second respondent sought for dismissal of this appeal.

9. I have heard the learned counsel appearing for the appellants/petitioners and the learned counsel appearing for the second respondent-Insurance Company and perused the materials available on record.

10. This appeal is filed only in respect of quantum of award. The conclusion of the Tribunal fixing the negligence on the part of the first respondent vehicle driver alone caused the accident. On the basis of P.Ws. 1 and 2 evidence as well as Ex.P1 First Information Report is not challenged. Thus, the finding of the Tribunal on the basis of eye witness account of P.W.2 as well as P.W.1 oral evidence and contents of Ex.P1 First Information Report that the accident took place only due to the rash and negligent driving of the rider of two wheeler and consequently as the owner and insurer of the vehicle, namely, the respondents are liable to pay compensation is just and proper and the same is needs no interference.

11. The petitioners contended that the deceased was aged about 22 years and he was studying M.Sc. Bio Chemistry. The petitioners further contended that their deceased son was brilliant student and to prove the same they have produced the 10th Mark Sheet of the deceased as Ex.P5, Higher Secondary Mark Sheet as Ex.P6, B.Sc. Bio Chemistry Mark Sheet as Ex.P7 and M.Sc. Bio Chemistry Mark Sheet as Ex.P10. The provisional certificate, degree certificate as well as conduct certificate issued during his P.G. Course are produced as Ex.P8, Ex.P9 and Ex.P11 respectively. The other academic certificate of the deceased is produced as Ex.P12 to Ex.P17. It is clear from the same that the deceased was a brilliant student and doing M.Sc. Bio Chemistry. Admittedly, the deceased being a student, he was not employed anywhere. As per Ex.P2 Postmortem Certificate, the deceased was stated to be 23 years. Accordingly, the multiplier to be applied is 18. The deceased being a bachelor, 50% of the income is to be deducted towards his personal expenses instead of 1/3rd deducted by the Tribunal.

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12. The main issue contended by the learned counsel appearing for the petitioners/claimants before this Court is that the Tribunal wrongly fixed the notional monthly income of the deceased at

Rs.3,000/-, even though, he was M.Sc. Bio Chemistry Graduate. The learned counsel appearing for the petitioners further contended that in a similar nature of case, where the deceased was 18 years old, doing first year engineering course, the Division Bench of this Court has fixed the notional income of the deceased at Rs.12,000/- per month. In support of his contention, he relied upon the ruling reported in **2015 (1) TN MAG 82 (DB) in BRANCH MANAGER, ORIENTAL INSURANCE CO. LTD., Vs. U.GOPINATH AND OTHERS**, wherein it has held as follows:-

"At this juncture, it has to be taken note of that in the Central Government, the basic salary of a Engineering Graduate, as per the revise pay scale is Rs.15,600/- per month, with grade pay Rs.5000-6000/- per month. It is, no doubt, true that there is no guarantee of employment in the IT Sector and there may be uncertainties in case of Private Sectors. It may be more appropriate, reasonable and rational to take minimum wages or salary at the entry level fixed by the Government to do such jobs, which the deceased after completing his course would have got. Thus, in view of the present salary of the Engineers, either it is IT, Mechanical or Civil Engineering, there cannot be any doubt to say that the deceased would have earned minimum Rs.12,000/- to

Rs.15,000/- per month. It has to be seen that nowadays Class IV employees are also getting a minimum salary of Rs.7,000/- to Rs.10,000/- per month, depending upon their service. Therefore, considering the normal scales fixed to the technical persons, we are of the view that the minimum salary of a technical person, can be taken as Rs.12,000/- per month. Therefore, the income of the deceased is fixed at Rs.12,000/- per month.”

Likewise, the learned counsel appearing for the petitioners/claimants also relied upon the ruling reported in **2017 (1) TN MAC 510 (DB)**, wherein another Division Bench of this Court fixed the notional income of the deceased person who was the second year M.B.B.S. student at Rs.18,000/- p.m.

13. On the other hand, opposing the claim of the petitioners, the learned counsel appearing for the second respondent-Insurance Company contended that being a student he was not earning anything and as such, the claim of the petitioner for enhancement of the award amount is unjustified. Considering the rival contentions and the fact that the deceased was meritorious student as evidenced by documents produced by the petitioners and the fact that the accident occurred during, 2008, it will be appropriate to fix the notional income of the

deceased at Rs.7,000/- per month. As the deceased was aged 23 years, 40% of the income is added as future prospects. Thus, the monthly income will be Rs.7,000/- x 40% = Rs.2,800/- + Rs.7,000/- =Rs.9,800/-. Since the deceased was bachelor, 50% of the amount is to be deducted towards his personal income and after that the monthly contribution would be Rs.4,900/-. Accordingly, the loss of dependency is calculated is as follows:-

$$\text{Rs.4,900/-} \times 12 = \text{Rs.58,800/-} \times 18 = \text{Rs.10,58,400/-}.$$

14. Following the Apex Court decision reported in **2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS**, towards loss of estate, loss of consortium and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of consortium	=	Rs. 40,000.00
Loss of Estate	=	Rs. 15,000.00
Funeral Expenses	=	Rs. 15,000.00

14. Accordingly, the compensation awarded by the Tribunal is modified and enhanced as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	4,32,000.00	10,58,400.00
2.	Funeral Expenses	5,000.00	15,000.00
3.	Loss of consortium	-	40,000.00
4.	Loss of Estate	-	15,000.00
	Total	4,37,000.00	11,28,400.00

15. In the Result, the Civil Miscellaneous Appeal is partly allowed. No Costs. The amount of Rs.4,37,000/- awarded by the Tribunal, dated 07.06.2012 made in MCOP.No.723 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge and Special Judge for EC Act Cases, Salem, is enhanced to Rs.11,28,400/- . The second respondent-Insurance Company is directed to deposit the entire enhanced award amount of Rs.11,28,400/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant/petitioner is permitted to withdraw the entire award amount by filing necessary application before the Tribunal. The

appellant/claimant is directed to pay the required Court fee for the enhanced award amount before getting the copy of Judgment.

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20.04.2018

To

The Additional District Judge
and Special Judge for EC Act Cases,
Salem.

Note:

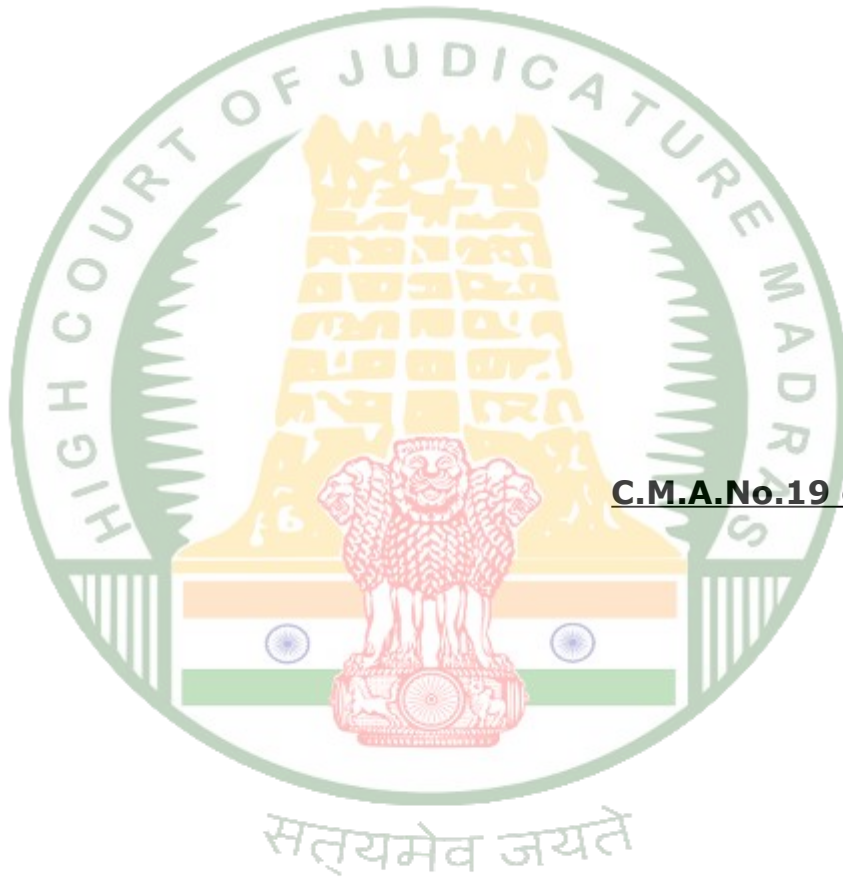
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Dated: 20.04.2018