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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1000 of 2021

1.K.Mani
2.Minor. K.Pirundha
3.Minor. K.Eniyan
(Minor appellants 2 & 3 represented by their Mother
and next friend, K.Mani, 1st appellant herein)
4.R.Palani
5.P.Ramayee ... Appellants/Petitioners

Vs.

1.S.Balakumar
2.United India Insurance Company Limited,
No.2, Bhuvanewari Complex,
Dr.Sankaran Road, Namakkal.
3.United India Insurance Company Limited,
Muthaiha Complex,
No.1170, Mettur Road,
Erode District - 638 011. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.12.2020 made in M.C.O.P.No.261 of 2018, on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode.

For Appellants : Mr.S.P.Yuaraj

For R2 : Ms.I.Malar

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 02.12.2020 made in M.C.O.P.No.261 of 2018, on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode.



3.The appellants are the claimants in M.C.O.P.No.261 of 2018, on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode. They filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one P.Kandasamy, who died in the accident that took place on 13.06.2017.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car owned by 1st respondent and directed the 2nd respondent to pay a sum of Rs.18,05,000/- as compensation to the appellants and dismissed the claim petition as against the 3rd respondent.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellants contended that at the time of accident the deceased was aged 43 years, working as a Rig Motor Driver and was earning a sum of Rs.30,000/- per month. To prove the same, the appellants marked the salary slip of the deceased as Ex.P10. But, the Tribunal has fixed a meagre sum of Rs.10,000/- per month as notional income of the deceased. The Tribunal ought to have fixed a sum of Rs.30,000/- as monthly income of the deceased as claimed by the appellants and awarded compensation. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

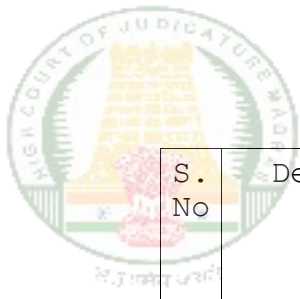
7.Per contra, learned counsel appearing for the 2nd respondent-United India Insurance Company Limited, Namakkal contended that the appellants failed to prove the avocation and income of the deceased by producing valid document. In the absence of any material evidence with regard to avocation and income, a sum of Rs.10,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The amounts awarded by the Tribunal towards loss of consortium to 1st appellant, parental consortium and filial consortium are excessive. The learned counsel appearing for the 2nd respondent further contended that the Tribunal has erroneously awarded interest at the rate of 9% per annum instead of 7.5% per annum and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-United India Insurance Company Limited, Namakkal and perused the entire materials on record.



9. It is the case of the appellants that at the time of accident the deceased was aged 43 years, working as a Rig Motor Driver and was earning a sum of Rs.30,000/- per month. To prove the same, the appellants marked the salary slip of the deceased as Ex.P10. The Tribunal considering Ex.P10, held that the said document was typed in letter pad and the same is not acceptable. The Tribunal has given valid reason for not accepting Ex.P10. In the absence of any valid document with regard to avocation and income, the Tribunal considering the age and nature of work done by the deceased, fixed a sum of Rs.10,000/- per month as notional income of the deceased. The accident is of the year 2017. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.14,000/- per month is fixed as notional income of the deceased. As per Ex.P8/Postmortem Certificate, the deceased was aged 43 years at the time of accident. The Tribunal following the judgments of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] and 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], rightly applied multiplier '14' and granted 25% enhancement towards future prospects. There are five dependants of the deceased and the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased. Thus, by fixing Rs.14,000/- per month as notional income of the deceased, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.22,05,000/- {Rs.17,500/- [Rs.14,000/- + Rs.3,500/- (25% of Rs.14,000/-)] X 12 X 14 X $\frac{3}{4}$ }. This Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same is hereby confirmed. 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 dependency	15,75,000/-	22,05,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	confirmed
3.	Parental consortium	80,000/-	80,000/-	Confirmed
4.	Filial consortium	80,000/-	80,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
6.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	Rs.18,05,000/-	Rs.24,35,000/-	Enhanced by Rs.6,30,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,05,000/- is hereby enhanced to Rs.24,35,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-United India Insurance Company Limited, Namakkal is directed to deposit the 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 to the credit of M.C.O.P.No.261 of 2018, on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode. On such deposit, the appellants 1, 4 & 5 are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor appellants 2 & 3 are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 & 3 attain majority. On such deposit, the 1st appellant, being the Mother of the minor appellants 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellants 2 & 3. This appeal is dismissed as against the 3rd respondent-United India Insurance Company Limited, Erode District. No costs.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The Special District Judge,
Motor Accident Claims Tribunal,
Erode.



2.The Section Officer,
VR Section,
High Court, Madras.

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+1cc to Mr.S.P.Yuaraj, Advocate Sr.19678

C.M.A.No.1000 of 2021

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