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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A.No.2031 of 2021

(Heard through VC)

- 1.Manjula
- 2.Minor Sanjay
- 3.Minor Sandhiya
- 4.Minor Anushka
- 5.Chandra

... Appellants

(Petitioners 2 to 4 are minors,
represented by their mother
Manjula as natural guardian and
next friend)

All are residing at No.29/34, 2nd Street,
Ernavore Village,
Nethaji Nagar Beach Road, Ennore,
Chennai - 600 057.

Vs.

1. A.K.Kalaiselvi
2. United India Insurance Company Limited,
No.134, Greams Road,
IV Floor, Anna Salai,
Chennai - 600 006.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173
of Motor Vehicle Act, 1988 against the Judgment and Decree dated
24.11.2020 made in M.A.C.T.O.P.No.1336 of 2019, on the file of
the Motor Accidents Claims Tribunal, Chief Judge, Court of Small
Causes, Chennai.

For Appellant : Ms.A.Subadra

For Respondents : R1 - Notice dispensed with
Mr.M.J.Vijayaraghavan for R2



J U D G M E N T

Judgment of the Court was delivered by V.SIVAGNANAM. J.

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Being dis-satisfied with the award of compensation in M.A.C.T.O.P.No.1336 of 2019, passed by the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai, the claimants have preferred this appeal seeking enhancement of compensation.

2. The case of the claimants is that on 07.06.2018 at about 06.00 a.m., the deceased was walking along with his wife, on the Ennore Express Road, at the extreme left side of the road, in a careful manner. At that time, a two-wheeler bearing registration No.TN-03-P-4550, owned by the first respondent and insured with the second respondent-United India Insurance Company Limited, came in a rash and negligent manner and dashed behind the deceased. In the accident, he sustained multiple grievous injuries and immediately, he was taken to Sugam Hospital and thereafter he was shifted to Stanley Government Hospital. Despite treatment, he succumbed to the injuries. The claimants further stated that the deceased was 37 years on the date of accident and he was working as coolie and thereby he earned Rs.25,000/- per month and hence, they are entitled for compensation of Rs.80,00,000/-.

3. Resisting the claim, the second respondent-Insurance Company filed their counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation.

4. In the course of trial, the first claimant was examined as P.W.1 and Exs.P.1 to P.7 were marked. On the side of the Insurance Company neither witness was examined nor document was marked. The first respondent was set exparte. In the conclusion of trial, the Tribunal found that the rider of the two wheeler was responsible for the accident and awarded compensation of Rs.23,98,000/- with interest at the rate of 7.5% per annum. Challenging the award, the present Civil Miscellaneous Appeal has been filed, seeking enhancement of compensation.

5. Ms.A.Subadra, learned counsel for the appellants, contended that the income fixed by the Tribunal at the rate of Rs.12,000/- per month is meagre and the Tribunal ought to have fixed a sum of Rs.25,000/- per month as income. It is further contended that amount awarded by the Tribunal under the head of love of affection is on the lower side and hence, prays for enhancement of compensation.



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6. Per contra, Mr.M.J.Vijayaraghavan, learned counsel for the second respondent contended that the Tribunal has rightly awarded the compensation and no material is placed before this Court for enhancing the compensation in this appeal.

7. Heard the rival submissions made on either side and perused the materials on record.

8. According to the appellants/claimants, the deceased was earning a sum of Rs.25,000/- per month by working as a Labour. However, no evidence produced was by the appellants. Therefore, the Tribunal has fixed a notional monthly income of the appellant as Rs.12,000/- in absence of direct evidence, which is a reasonable one.

9. Though the learned counsel appearing for the appellants/claimants has contended that the award is meager and sought enhancement, on perusal of the records, we find that the Tribunal, on proper appreciation of evidence, has fixed the notional income and adopting correct multiplier awarded a just and reasonable compensation under the heads of loss of dependency, consortium to the first appellant and funeral expenses. Therefore, the amount awarded by the Tribunal under the abovesaid heads are confirmed. However, as contended by the learned counsel for the appellants that a sum of Rs.75,000/- awarded under the head of love and affection is on the lower side. As per the decision of the Hon'ble Apex Court in the case of Magma General Insurance Co. Ltd., vs. Nanu Ram and others reported in 2018(1) TN MAC 452 (SC), the claimants are entitled to be awarded under the head of love and affection and therefore, a sum of Rs.75,000/- awarded by the Tribunal under the head of love and affection, by awarding a sum of Rs.15,000/- to each of the claimants is hereby set aside, instead a sum of Rs.1,60,000/- is awarded to the claimants 2 to 5 under the head of "filial consortium" by awarding Rs.40,000/- each. The Tribunal has not awarded any amount towards loss of Estate and hence, this Court awards Rs.15,000/- under the head of Loss of Estate;

10. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:-

S. No.	Heads under which amounts are awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of future dependency	22,68,000/-	22,68,000/-



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S. No.	Heads under which amounts are awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
2.	Loss of love and affection	75,000/-	-
3.	Consortium to the first appellant	40,000/-	40,000/-
4.	Filial Consortium (Appellants 2 to 5)	-	1,60,000/-
5.	Loss of Estate	-	15,000/-
6.	Funeral expenses	15,000/-	15,000/-
	Total	23,98,000/-	24,98,000/-

The total amount comes to Rs.24,98,000/-, which is rounded off to Rs.25,00,000/-. The claimants are entitled to Rs.25,00,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

11. In view of the above modifications, the Civil Miscellaneous Appeal is partly allowed. The second respondent-Insurance Company is directed to deposit the above modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the major claimants are permitted to withdraw their share of the modified award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn, if any. The share of the minor claimants shall be deposited in any one of the nationalized banks in a fixed deposit till they attain majority. The interest accruing on the minors deposit is permitted to be withdrawn by the mother of the minor claimants, viz., Manjula, the first appellant herein, once in three months. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judge, Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.M.Malar, Advocate, S.R.No.62948

C.M.A. No.2031 of 2021

RLD(CO)
SU(13/05/2022)