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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1488 of 2020

1.Malini C Mohanan

2.M.Malathyamma

3.R.Rohan Krishna (Minor)

Rep by her M & N.F Malini C Mohanan

Residing at No.27/55, Nainiappan Street,

Mannady, Chennai - 600 001.

... Appellants/Petitioner

Vs.

1.K.Sivakumar

2.The Manager,

ICICI Lombard General Insurance Co Ltd,

TP Investigation, 84 & 85, Walltax Road,

1st Floor, Arihant Plaza,

Chennai - 600 003.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree order dated 09.12.2019 made in M.C.O.P.No.6058 of 2018, on the file of the Motor Accident Claims Tribunal, Chief Judge Court of Small Causes, Chennai.

For Appellants : Mr.A.A.Venkatesan

For Respondents : Mr.B.Sivakollapan for R2

R1 No appearance

JUDGMENT

The claimants are the appellants in this appeal. They are aggrieved by the impugned judgment and decree dated 09.12.2019 passed by the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai in M.C.O.P.No.6058 of 2018.

2.By the impugned judgment and decree, the Tribunal has



awarded a total sum of Rs.22,08,646/- as compensation.

3.This appeal has been filed for enhancement of compensation on the ground that the Tribunal has not awarded any amount towards Future Prospect as per the decision of the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Pranay Sethi and Others, (2017) 16 SCC 680 and that the Tribunal has not awarded any amount towards Transportation and has awarded lower amount towards loss of love and affection/Consortium. The impugned order is sought to be defended by the learned counsel for the 2nd respondent on the ground that the Tribunal has considered a higher notional income of Rs.20,000/- merely on the strength of Ex.P11 to P13 which are the Diploma Certificate, Provisional Certificate and Pharmacist Registration Certificate of the deceased M.Mohanan. It is submitted that if the deceased was earning a sum of Rs.30,000 per month certainly he would have been an assessee under the Income Tax Act and therefore incumbent on the part of the appellants to have produced such documents to substantiate the monthly income of Rs.30,000/- or even 20,000/- which has been adopted by the Tribunal.

4.The learned counsel for the respondent submits that though the Tribunal has not awarded any amount towards loss of amenities and not any amount towards future prospect, over all amount awarded by the Tribunal was a just compensation in as much as the Tribunal has considered Rs.20,000/- as notional monthly income of the deceased in absence of any direct evidence to substantiate the aforesaid income.

5.Heard the learned counsel for the appellant and the respondent.

6.I have perused the impugned judgment and decree and the exhibits that were marked before the Tribunal.

7.The deceased M.Mohanan was aged about 48 years at the time of his death. He met with a fatal accident which eventually consumed him. The appellants have stated that the deceased was earning Rs.30,000/- per month. The Tribunal has considered a notional income of Rs.20,000/- based to Ex.P11 to P13. The 2nd respondent/Insurance Company has not challenged the same by way of an appeal I am therefore inclined to confirm the same. Considering the notional income of Rs.20,000 per month, the Tribunal ought to have awarded added another 25% towards Future Prospect. Therefore, the compensation awarded by the Tribunal is liable to be enhanced.



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8. That apart, it is noticed that the Tribunal has awarded only Rs.20,000/- towards loss of love and affection and Rs.30,000/- towards loss of consortium. As per the decision of the Hon'ble Supreme Court in Magma Insurance Company Limited Vs Nanuram @ Chuhruram and others, (2018) 18 SCC 130 compensation towards loss of parental consortium is Rs.40,000/-. The impugned judgment and decree insofar as it holds the 2nd respondent is entitled to pay the recover amount is confirmed in the light of the finding recorded in Paragraph 16 of the impugned judgment and decree. Under these circumstances, the compensation awarded by the Tribunal is liable to be enhanced as follows:-

Heads and Calculation	Amount
Loss of dependency:-	
Monthly Income Rs. 20,000.00/-	
Add: Future Prospect @ 25%	
Rs: 5,000.00/-	
(20,000x25%) -----	
Rs. 25,000.00/-	
Less: Personal Expenses 1/3 rd	
(25,000 x 1/3) Rs. 8,333.33/-	

Rs. 16,666.67/-	
Annual Contribution to the family	
(16,666.67 x 12) Rs.2,00,000.04/-	
Multiplier 13	
(2,00,000.04 x 13) Rs.26,00,000.52/-	
*	
Loss of Consortium to the 1 st appellant	Rs.40,000/-
Loss of Parental Consortium to the 2 nd appellant	Rs.40,000/-
Loss of Filial Consortium to the 3 rd and 4 th appellants	Rs.80,000/-
(Rs.40,000/- each)	
Funeral Expenses	Rs.20,000/-
Ambulance Charges	Rs.23,646/-



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Heads and Calculation	Amount
Total	Rs.28,03,646.52/-
	-
	Rounded off to
	Rs.28,03,650/-

*Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12.

9.The 2nd respondent/Insurance Company is therefore directed to deposit the enhanced amount of compensation of Rs.28,03,650/- together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of such deposit, less any amount already deposited by it, within a period of six weeks from the date of receipt of a copy of this Judgment.

10.On such deposit being made by the 2nd respondent/Insurance Company, the 1st and 2nd appellants/1st and 2nd claimants are permitted to withdraw their shares together with interest accrued thereon, less any amount already withdrawn, by filing suitable applications before the Tribunal.

11.Since the 3rd appellant/3rd claimant is stated to be minor at the time of filing of the claim petition, his share shall be deposited in an interest bearing account and the interest shall be allowed to be withdrawn by the 1st appellant/1st claimant for the benefit of the minor. On attaining the age of majority, the 3rd appellant/3rd claimant may also file appropriate application for withdrawing his share of compensation.

12.Accordingly, this appeal stands partly allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1.The Manager,

ICICI Lombard General Insurance Co Ltd,
TP Investigation, 84 & 85, Walltax Road,
1st Floor, Arihant Plaza, Chennai - 600 003.



2.The Motor Accident Claims Tribunal,
Chief Judge Court of Small Causes, Chennai

3.The V.R.Section,
Madras High Court, Madras.

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+1cc to Mr.A.A.Venkatesan, Advocate SR.No.28213

C.M.A.No.1488 of 2020

NRL (CO)
GN (07/12/2021)