IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.1880 of 2020

1. Nirmala Devi
2. Ranvir Singh ... Appellants/Petitioners

Vs.

1.M/s.Universal Transport Service
Rep. By its Prop. C.Ravindran
Thirunallar Main Road,
Patchur, Karaikal
Pin – 609 602.

2.New India Assurance Company Limited,
(Motor Third Party Cell)
Bombay Mutual Buidlings, 6th Floor,
No.232, NSC Bose Road,
Chennai – 600 001. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.07.2019 made in M.C.O.P.No.4237 of 2018 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai.

For Appellants : Mr.K.Varadhakamaraj

For R2 : Mr.S.Dhakshinamoorthy

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 16.07.2019 made in M.C.O.P.No.4237 of 2018 on the file of the Motor Accident

Claims Tribunal, Chief Court of Small Causes, Chennai.

3. The appellants are the claimants in M.C.O.P.No.4237 of 2018 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai. They filed the above said claim petition, claiming a sum of Rs.1,00,00,000/- as compensation for the death of one Himanshu who died in the accident that took place on 28.03.2018.

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 bus belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.43,39,000/- as compensation to the appellants.

5. Not 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 26 years, working as Data associate in M/s.Amazon Development Centre (India) Pvt. Ltd., Chennai and was earning a sum of Rs.38,000/- per month. To prove the avocation and income of the deceased, the appellants examined PW3, Manager of M/s.Amazon Development Centre (India) Pvt. Ltd., Chennai and have marked Ex.P5 – Pay Slips, Ex.P6 – Bank statement and Ex.P19 – salary certificate issued by the employer of the deceased wherein Rs.4,20,934/- has been mentioned as the annual income of the deceased for the year 2018. During February 2018, the gross monthly income of the deceased was Rs.35,096/-. The Tribunal, erroneously fixed a sum of Rs.30,000/- as monthly income of the deceased as against Rs.38,000/-, claimed by the appellants. The Tribunal failed to award any amount towards loss of estate. The amounts awarded by the Tribunal towards funeral expenses and loss of love & affection are meagre and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that as per Ex.P19 – salary certificate, the last drawn CTC was mentioned as Rs.3,73,150/-. In the absence of filing the Income Tax Returns of the deceased, the Tribunal has fixed the monthly income of the deceased as Rs.30,000/- and the same is proper. The Tribunal considering the entire materials on record, has awarded a sum of Rs.43,39,000/- as compensation to the appellants under different heads and the same is not meagre. The appellants have not made out any case for enhancement of compensation 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-Insurance Company and perused the entire materials on record.

9. The main contention raised by the learned counsel for the appellants is that the monthly income of the deceased fixed by the Tribunal at Rs.30,000/- is on the lower side. In support of his contention, he drew the attention of this Court to Ex.P5 – pay slips of the deceased from October 2017 to February 2018 and Ex.P19 – salary certificate issued by the employer of the deceased. Even as per Ex.P19, the last drawn Cost To Company (CTC) of the deceased for the year 2018 was mentioned as Rs.4,20,934/-. P.W.3 – Manager of the company where the deceased was working at the time of accident has also deposed to that effect. Cost to Company (CTC) is the yearly expenditure that a company spends on an employee. Each employee spend depends on their salary and variable. CTC is calculated by adding salary and additional benefits that an employee receives such as EPF, gratuity, house allowance, food coupons, medical insurance, travel expense and so on. CTC in colloquial terms is the cost an employer bears to hire and sustain its employees. CTC = Gross Salary + Benefits. Therefore, as per Ex.P19, the gross monthly income of the deceased comes to Rs.35,078/- (Rs.4,20,934 / 12). Hence, this Court fixes a sum of Rs.35,000/- per month as the notional income of the deceased.

10. The deceased was a bachelor aged 26 years at the time of accident. The Tribunal, following the judgment of the Hon'ble Apex Court, has rightly granted 40% towards future prospects, applied multiplier 17 and deducted 50% towards personal expenses of the deceased. Thus, by fixing the monthly income of the deceased as Rs.35,000/-, the compensation awarded by the Tribunal towards loss of income is modified to Rs.49,98,000/- [Rs.35000 + 14000 (35000 x 40%) x 12 x 17]. The Tribunal failed to award any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate. Considering the age, avocation, income of the deceased and year of accident, 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 are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	42,84,000/-	49,98,000/-	Enhanced
2.	Loss of love and affection	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of Estate	-	15,000/-	Granted
	Total	43,39,000/-	50,68,000/-	Enhanced by Rs.7,29,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.43,39,000/- is hereby enhanced to Rs.50,68,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company 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.4237 of 2018 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai. On such deposit, the appellants are permitted to withdraw their share of the award amount, now determined by this Court, on the basis 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. No costs.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To

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

Copy to:
The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.1880 of 2020

JPL(CO)
CB(04/01/2022)