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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.1753 OF 2020

1. Selvaraj

2. Thangammal,

... Appellants/
Petitioners

Vs.

1. K.S.Rangasamy College of Technology,
Tiruchengode Taluk,
Namakkal District - 637 211.

2. The United India Insurance Company Limited,
TP HUB Divisional Office,
Peramanoor Main Road,
Salem - 7.

... Respondents 1 & 2/
Respondents 1 & 2

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 13.03.2019 made in M.C.O.P.No.1820 of 2016 on the file of the Motor Accidents Claims Tribunal, 2nd Additional District Judge, Salem.

For Appellants : Mr.SP.Yuaraj

For Respondents :

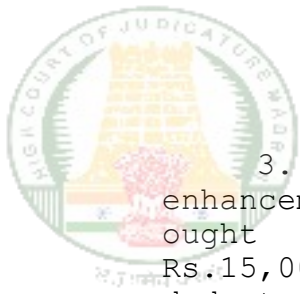
For R1 : No appearance

For R2 : Mr.J.Chandran

JUDGMENT

This appeal has been filed by the claimants who are the parents of the deceased-Sathishkumar who tragically met with an accident and died on 03.08.2016.

2. The Tribunal has awarded a sum of Rs.11,15,640/- as compensation by considering the notional income of the deceased as Rs.8,000/- per month.



3. In this appeal, the parents of the deceased seeks enhancement of compensation on the ground that the Tribunal ought to have awarded monthly income of the deceased as Rs.15,000/- per month and the Tribunal ought not to have deducted 10% contributory negligence of the deceased for not wearing helmet. It is further submitted that the Tribunal has not awarded any amount towards love and affection.

4. The learned counsel for the 2nd respondent/Insurance Company submits that the impugned Judgment and decree passed by the Tribunal is well-reasoned and requires no interference. He further submits that the deceased was pillion rider and was not wearing helmet at the time of death and therefore the Tribunal accordingly deducted 10% towards contributory negligence on the part of the deceased.

5. I have considered the arguments advanced by the learned counsel for the appellant and the 2nd respondent. I have perused the impugned Judgment and decree, the exhibits that were marked before the Tribunal and the deposition of the witnesses.

6. In my view, the Tribunal ought to have considered atleast Rs.10,500/- as notional monthly income of the deceased considering the fact that the accident is of the year 2016 in absence of any evidence to substantiate the same.

7. In fact, the appellants/claimants would have also difficulty in establishing the monthly income, considering the fact that the deceased was engaged in unauthorized sector.

8. Therefore, with a view to award a just compensation, this Court is inclined to consider the notional monthly income of the deceased as Rs.10,500/- per month. The Tribunal ought to have also awarded amount towards love and affection/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.

9. In my view, the Tribunal has erred in deducting 10% towards contributory negligence of the deceased as every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear protective headgear conforming to the standards of Bureau of Indian Standards as per Section 129 of the Motor Vehicles Act, 1988.

10. Therefore, the compensation awarded by the Tribunal is re-computed as follows:-



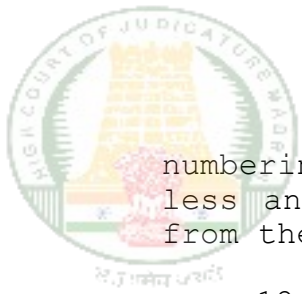
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Heads and Calculation	Amount
Loss of earning capacity:-	
Monthly Income : Rs.10,500/-	
Add: *Future Prospects at 40% (10,500 x 40/100) : Rs. 4,200/-	
----- : Rs.14,700/-	
Less: Personal Expenses 1/2 nd (14,700 x 1/2) : Rs. 7,350/-	
----- : Rs. 7,350/-	
Annual Contribution to the family (7,350 x 12) : Rs.88,200/-	
Multiplier 18 (88,200 x 18): Rs.15,87,600/-	
	Rs.15,87,600/-
** Loss of Filial Consortium to the appellants (Rs.40,000/- each)	Rs. 80,000/-
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Transportation	Rs. 10,000/-
Attender Charges	Rs. 15,000/-
Total	Rs.17,22,600/-

* Future prospects is added by this Court at 40% as per the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

** Filial Consortium is granted by this court as per the decision of the Hon'ble Supreme Court in Magma Insurance Company Limited Vs Nanuram @ Chuhruram and others, (2018) 18 SCC 130.

11. The 2nd respondent/Insurance Company is therefore directed to deposit the enhanced amount of compensation of Rs.17,22,600/- after deducting amount already deposited by it 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 within a period of six weeks from the date of receipt of a copy of this Judgment.

12. On such deposit being made by the 2nd respondent/ Insurance Company, the appellants/claimants are permitted to withdraw their respective shares in the same proportion as was ordered by the Tribunal, together with interest accrued thereon, less the amount already withdrawn if any, by filing suitable application before the Tribunal.

13. This Civil Miscellaneous Appeal stands partly allowed. No costs.

Sd/-
Deputy Registrar (Admin III)

//True Copy//

Sub Assistant Registrar

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To:

1. The Motor Accidents Claims Tribunal,
II Additional District Judge, Salem.
2. The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.J.Chandran, Advocate, S.R.No.26869

C.M.A.No.1753 of 2020

MG(CO)
CS/18/11/2021