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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1970 OF 2020

Saravanan

.. Appellant/Claimant

..Vs..

1. Dhayalasundaram

2. The National Insurance Company Limited,
2nd Floor, 81-D, North Car Street,
Tiruchengode Town & Taluk,
Namakkal District - 637 211.

3. The National Insurance Company Limited,
Branch Office - 73, Perundurai Road,
Erode - 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 16.03.2020 made in M.C.O.P.No.191 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode.

For Appellant : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneedharan

For R2 : Mr.J.Chandran

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 16.03.2020 made in M.C.O.P.No.191 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode.

3.The appellant is the claimant in M.C.O.P.No.191 of 2018 on the file of the Motor Accidents Claims Tribunal, Special



District Court, Erode. He filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of his mother viz., Pappathi who died in the accident that took place on 14.07.2017.

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4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.5,00,600/- as compensation to the appellant and dismissed the claim petition as against the 3rd respondent.

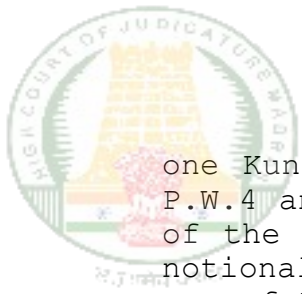
5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal.

6.The learned counsel appearing for the appellant contended that at the time of accident, the deceased was aged 55 years, working as Coolie at M/s.Yogam Printers, Tiruchengode and was earning a sum of Rs.7,000/- per month. To prove the avocation and income, the appellant examined one Kunjammal as P.W.4. The Tribunal after considering the evidence of P.W.4, fixed a meagre sum of Rs.6,000/- per month as notional income of the deceased. The Tribunal ought to have fixed the monthly income at Rs.7,000/- as claimed by the appellant. The compensation awarded by the Tribunal towards funeral expenses, loss of estate, loss of love and affection and transportation are meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent contended that the appellant failed to prove the avocation and income of the deceased by producing valid documents. In the absence of any material evidence with regard to avocation and income of the deceased, a sum of Rs.6,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal considering the entire materials on record, awarded a sum of Rs.5,00,600/- as compensation to the appellant which is excessive and hence, the appellant is not entitled to any enhancement and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

9.From the materials available on record, it is seen that it is the contention of the appellant that at the time of accident, the deceased was aged 55 years, working as Coolie at M/s.Yogam Printers, Tiruchengode and was earning a sum of Rs.7,000/- per month. To prove the avocation and income, the appellant examined



one Kunjammal as P.W.4. The Tribunal considered the evidence of P.W.4 and fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident occurred in the year 2017 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.7,000/- per month as claimed by the appellant is fixed as notional income of the deceased. As per the judgments of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others] and 2009 (2) TNMAC 1 SC Supreme Court, [Sarala Verma & others Vs. Delhi Transport Corporation & another], 10% enhancement granted towards future prospects of the deceased and multiplier '11' adopted by the Tribunal are proper. The appellant is the only legal heir of the deceased and the Tribunal has rightly deducted $\frac{1}{2}$ towards personal expenses of the deceased. Thus, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.5,08,200/- {Rs.7,700/- [(Rs.7,000/- + Rs.700/- (10% of Rs.7,000/-)] x 12 x 11 x $\frac{1}{2}$ }. The amount awarded by the Tribunal towards loss of love and affection is meagre and hence, the same is enhanced to Rs.40,000/-. 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:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	4,35,600/-	5,08,200/-	Enhanced
2.	Transportation	10,000/-	10,000/-	Confirmed
3.	Loss of love and affection	25,000/-	40,000/-	Enhanced
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of estate	15,000/-	15,000/-	Confirmed
	Total	Rs.5,00,600/-	Rs.5,88,200/-	Enhanced by Rs.87,600/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,00,600/- is hereby enhanced to Rs.5,88,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount if any already deposited, 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.191 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District



Court, Erode. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any already withdrawn by making necessary applications before the Tribunal. This appeal is dismissed as against the 3rd respondent. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

krk

To

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.605

+2cc to Mr.T.S.Arthanareeswaran, Advocate, S.R.No.1042

C.M.A.No.1970 of 2020

BS(CO)
CS/31/08/2021