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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A. No.383 of 2022

1.Vasanth

2.M.Ramalingam

... Appellants/Petitioners

Vs.

1.D.R.Balasubramanian

2. The Divisional Manager,

National Insurance Company Ltd.,

Divisional Office, No.110, JN Street,

Puducherry - 605 001.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.4381 of 2018 dated 29.11.2021 on the file of the Motor Accident Claims Tribunal, I Additional District & Sessions Judge, Cuddalore.

For Appellants : Ms.Ramya V. Rao

For Respondents: Mr.P.Sankaranarayanan
for R2

R1- Not ready in notice

J U D G M E N T

Seeking enhancement of the Award passed by the Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Cuddalore in M.C.O.P.No.4381 of 2018 dated 29.11.2021, the Appellants/ claimants are before this Court.

2. The Appellants / claimants are the parents of the deceased Krishnamoorthy, who had died in a road accident on 27.06.2018, when he was travelling on a motor-cycle bearing Registration No.TN-31-BC-8780. The deceased was hit from the rear by the first respondent's mini bus, which resulted in grievous injuries, being inflicted on the deceased. The Appellants are the parents of the deceased and as the only legal heirs of the deceased, they had filed the above claim petition.



3. The first respondent remained ex-parte before the Tribunal and the second respondent/ Insurance Company has filed a counter inter-alia contending that the compensation of Rs.40,00,000/- was unjust and unsustainable. They would plead that the accident had occurred also on account of the negligence of the deceased as the deceased had consumed alcohol at the time of the accident. They would further submit that the accident had occurred when the deceased attempted to over-take another motor-cycle and in doing so, he has gone and hit his motor-cycle on the right side of the mini bus. They would further contend that the FIR had been given by the brother of the deceased who had twisted the true facts and had given a different version and not the true sequences. They would submit that the compensation claimed is on the higher side. Therefore, they sought for dismissal of the claim petition.

4. The Tribunal below, by order dated 29.11.2021 was pleased to award a sum of Rs.14,12,300/- as compensation. Challenging the said Award, the Appellants/ claimants are before this Court. The main argument is that the notional income adopted by the Tribunal is very low and it is not commensurate to the value relevant for that particular year.

5. According to the learned counsel for the Appellants/ claimants, the notional income should have been fixed at a sum of Rs.12,000/- and not the sum of Rs.9,000/- fixed by the Tribunal. The counsel for the second respondent / Insurance Company submits that a just compensation has been awarded and the same may be sustained.

6. Heard the counsel on either side and perused the materials available on record.

7. The main grievance of the appellants / claimants is the fixation of notional income. Considering the age of the deceased and the period of accident a sum of Rs.12,000/- can be fixed as the notional income and future prospects of 40% has to be added. Therefore, the amount awarded under the head of loss of income has to be enhanced to a sum of Rs.18,14,400/-, which is re-worked as follows:

Loss of Income	Amount in Rs.
Notional income (Per month)	12,000
Add: Future Prospects (Rs.12,000 x 40%) (Per month)	4,800



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Loss of Income	Amount in Rs.
	16,800
Less: Personal expenses (50%, since bachelor) (Rs.16,800/- x 50%) (Per month)	8,400
	8,400
Notional income (per annum) (Rs.8,400/- x 12)	1,00,800
Multiplier	18
Total	18,14,400

8. Considering the fact that only a sum of Rs.20,000/- has been awarded under the head of love and affection, awarding Rs.10,000/- each to the Appellants, this amount definitely should be increased to keep it tune to the guidelines set out in the case of National Insurance Company Limited Vs. Pranay sethi and others reported in 2017 (16) Supreme Court Cases 680. Therefore, each of them are entitled to a sum of Rs.40,000/- and the amount under the head of loss of love and affection is increased to a sum of Rs.80,000/-. Therefore, the modified compensation is as follows:

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of Income	13,60,800	18,14,400
Loss of love and affection (Rs.40,000 x 2)	20,000	80,000
Transport Expenses	15,000	15,000
Funeral Expenses	16,500	16,500
Total	14,12,300	19,25,900

9.The appeal is partly allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from Rs.14,12,300/- to Rs.19,25,900/-. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.4381 of 2018 along with interest at the



rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the award amount, along with proportionate interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn. The claimants are directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the claimants. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The I Additional District & Sessions Judge,
Motor Accident Claims Tribunal,
Cuddalore

2. The Section Officer,
VR Section, Madras High Court,
Chennai.

+2cc to M/s.Ramya V.Rao, Advocate Sr.23800

+1cc to Mr.P.Sankaranarayanan, Advocate Sr.23786

C.M.A. No.383 of 2022

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