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C.M.A.No.933 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2022

C O R A M

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

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1. M. Shanthi
 2. V. Umavathi
 3. M.Manikandan
 4. E.Sumithra
 5. Kala
 6. M.Maheswari
 7. Minor M.Anand
- Rep by his next friend
Mother M.Shanthi

... Appellants

-Vs.-

- 1.R.Balamurugan
- 2.The United India Insurance Co.Ltd.,
No.104-A, Peramanur Main Road,
Peramanur, Salem

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award in Judgment and Decree dated 26.09.2019 made in M.C.O.P.No.1858 of 2018 on the file of the Motor Accident Claims Tribunal and Special District Judge, Salem.

For Appellants : Mr.S.P.Yuaraj



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For Respondent-1 : Served-No Appearance

For Respondent-2 : Ms.I.Malar

J U D G M E N T

The claimants are the appellants before this Court seeking enhancement of the Award dated 26.09.2019 passed in M.C.O.P.No.1858 of 2018 by the learned Special District Judge, (Motor Accident Claims Tribunal) at Salem.

2. The facts in brief are as follows:-

The appellants are the legal representatives of one Madhu. It is their case that the said Madhu was working as a Watchman in the local market earning a monthly income of Rs.10,000/-. On 29.09.2016 at about 9.40p.m., when the said Madhu was riding his TVS XL 100 vehicle on the Bangalore Bye Pass Road, as he neared T.G.Roundana, the Bus belonging to the first respondent and insured with the second respondent, hit the deceased, as a result of which, he had fallen on the road and got multiple injuries all over his body. The first respondent's vehicle was driven by its driver in a rash and negligent manner without observing basic traffic Rules and the accident was occurred only on account of this rash and negligent driving of the driver of the vehicle. The first respondent, as the owner of the bus and the second respondent as the insurer



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are jointly and severally liable to pay the compensation to the appellants.

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3. The owner of the vehicle remained absent and was set *ex-parte*. The second respondent-Insurance Company had filed their counter, in which, they had contended that the deceased has also contributed to the accident, as he had not observed the basic Traffic Rules, as he had suddenly entered the four lane track. The deceased did not possess a valid driving licence and had also failed to wear the helmet which has been the caused his death. Therefore, the second respondent-Insurance Company had contended that the deceased was also contributorily negligent.

4. The Tribunal below, after considering the evidence held that the deceased had also contributed to the accident by relying upon Ex.P1-FIR, which has been lodged by the son of the deceased. Further, the Court below has also taken note of the admission of P.W1 during her cross examination. Therefore, the Tribunal held that the deceased has contributed to the accident and has deducted 15% towards contributory negligence. Ultimately, the Tribunal below had fixed the notional monthly income of Rs.6,000/-, to which 10% was added towards future prospects. After deducting 1/3 towards



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personal expenses and adopting multiplier of 11, the Tribunal had arrived at a compensation of a sum of Rs.5,80,800/-. Since the deceased had also contributed to the accident, 15% contributory negligence was mulcted on him and after deducting the same, the Tribunal has awarded a sum of Rs.4,93,680/- under the head of "Loss of Dependency" and a total compensation of Rs.6,34,575/-.

5. Aggrieved by the fact that the compensation granted was on the lower side, the petitioners are before this Court.

6. Mr.S.P.Yuaraj, learned counsel appearing for the appellants would contend that the Tribunal has not taken into consideration the fact that the deceased was employed as a Watchman and would have earned atleast a sum of Rs.13,000/- per month. That apart, the Tribunal has not awarded any amount under the head of "Love and Affection" to the appellants 2 to 7 herein.

7. Per contra, Ms.I.Malar, learned counsel appearing for the second respondent-Insurance Company would submit that the appellants had not let in



any evidence to prove the income of the deceased and therefore, it for this reason, the Tribunal has adopted the notional income of Rs.6,000/- and this, according to her, is fair.

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

9. The appellants claimed compensation stating that the deceased Madhu was working as a Watchman and this factor has not been denied by the second respondent-Insurance Company. Therefore, it can be taken that the Insurance Company has not challenged the occupation of the deceased. However, there is no documentary evidence to prove the income of the deceased. The accident is of the year 2016 and considering the fact that the deceased claimed to be a Watchman, a notional monthly income of Rs.9,000/- can be safely adopted, to this 10% has to be added towards future prospects and therefore, the monthly income works out to a sum of Rs.9,900/-, to which, 1/5 has to be deducted towards personal expenses. Therefore, the monthly income would be a sum of Rs.7,920/- and after adopting the multiplier of 11, the total loss of income would be a sum of Rs.10,45,440/-[7,920 x 12 x 11].



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Since the negligence has to be apportioned between the appellants and the Insurance Company in the ratio 15:85, the amount payable by the Insurance Company would be a sum of Rs.8,88,624/- under the head of "Loss of Dependency". Admittedly, no amounts have been granted to the children of the deceased under the head of loss of "Love and Affection". The appellants 2 to 4 are the married daughters of the deceased Madhu. Therefore, they are not entitled to any amounts under this head. However, the appellants 5,6 and 7 have to be awarded a sum of Rs.40,000/- each under the head of loss of "Love and Affection". Therefore, the enhanced compensation are as follows:-

<i>Heads</i>	<i>Amount by the Tribunal in Rs.</i>	<i>Amount Awarded by this Court in Rs.</i>
Loss of Dependency	4,93,680	8,88,624 (enhanced)
Medical Expenses	70,895	70,895
Loss of Consortium	40,000	40,000
Funeral Expenses	15,000	15,000
Loss of Estate	15,000	15,000
Loss of Love and Affection to appellants 5,6 and 7 (Rs.40,000/- each)	-	1,20,000
Total	6,34,575	11,49,519

10. In the result, the Civil Miscellaneous Petition is partly allowed with the appellants being apportioned with 15% negligence. Therefore, the



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second respondent-Insurance Company shall be liable to pay compensation of a sum of Rs.11,49,519/- to the appellants. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.1858 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. The award shall be equally proportioned among the legal heirs and the share of the minors shall be deposited in any one of the nationalized bank till they attain majority and the first appellant shall be permitted to withdraw quarterly interest from the said amount. The appellants shall forfeit the remaining 15% of the award amount due to the deceased contributory negligence. The appeal was filed with a delay of 755 days and the same was allowed by this Court on 07.04.2022 in C.M.P.No.2979 of 2022 on condition that the appellants would not be entitled to interest for the said period. On such deposit being made, the appellants are permitted to withdraw the award amount, along with accrued interest except for the delayed period of 755 days and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. In other respects, the Award of the Tribunal is hereby confirmed.



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There shall be no order as to costs in the present appeal. Consequently,
connected miscellaneous petition is closed.

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Index:Yes/No

Speaking Order : Yes/No

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To

1. The Special District Judge, (Motor Accident Claims Tribunal), Salem.
- 2.The Section Officer, V.R.Section, High Court of Madras, Chennai.



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P.T.ASHA.J

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