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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.NO.124 OF 2018

1. K.Madeswari

2. Minor K.Desika

(Minor rep by her guardian, next
friend mother 1st appellant)

.. Appellants/Petitioners

Vs.

1. Sree Saradhambal Auto Mobiles Private Limited,
No.1/10, 11 Near Murugan Koil,
Salem Road, Namakkal.

(R1 set ex parte before the tribunal hence notice for R1
may be dispensed with for the time being)

2. The Manager,

M/s.Royal Sundaram Alliance Insurance
Company Limited, KSPT Towers,

117, Thuraiyur Salai, Namakkal - 637 001.

3. Tamilselvi

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order made in M.C.O.P.No.1429 of 2013 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Namakkal dated 11.09.2017 and for enhancement of compensation.

For Appellants : Mr.C.Kulanthaivel

For Respondent-2 : Mr.K.Vinod
for M/s.Elveera Ravindran

For Respondent-3 : Mr.M.Lokesh
for M/s.Ma.P.Thangavel



JUDGMENT

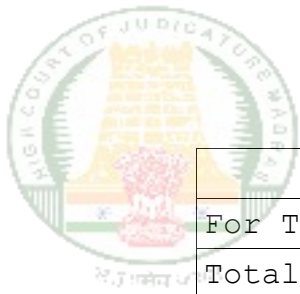
This Civil Miscellaneous Appeal is filed seeking enhancement of compensation granted by award dated 11.09.2017 made in M.C.O.P.No.1429 of 2013 on the file of the Motor Accidents Claims Tribunal cum Principal District Judge, Namakkal.

2. The claimants 1 and 2 in M.C.O.P.No.1429 of 2013 have filed the present appeal. They are the widow and daughter of the deceased Karthikeyan, who on 12.10.2013 at about 4.15 p.m. was riding a Honda Unicorn motor cycle bearing Registration No.TN 28 AD 7560 and at that time a Maruti Swift Dzire New Car came in the opposite direction and caused an accident. It is stated that the accident occurred only due to the rash and negligent driving of the driver of the Maruti Swift Dzire New Car. The mother of the deceased was impleaded as third respondent.

3. The claimants had filed another petition before the Tribunal for the very same accident in M.C.O.P.No.1424 of 2013, wherein, the mother of the deceased was shown as third petitioner, but the same was subsequently dismissed as not pressed and an award has been passed only in M.C.O.P.No.1429 of 2013.

4. On consideration of the evidence presented, by judgment dated 11.09.2017, the Tribunal had granted a sum of Rs.7,33,000/- as compensation. The calculation of the Tribunal was as follows:

Loss of dependency	Amounts
Monthly income	Rs.6,000/-
Future prospects	Nil
For the personal expenditure of the deceased 1/3 rd to be deducted Rs.6,000 x 1/3	Rs.2,000/-
Monthly contribution to the family Rs.6,000 - Rs.2,000	Rs.4,000/-
Annual contribution to the family Rs.4,000 x 12	Rs.48,000/-
By applying multiplier 15 Rs.48,000 x 15	Rs.7,20,000/-
Head	Amount
Total amount for Loss of dependency	Rs.7,20,000/-
For Loss of Estate	Rs.1,000/-
For Funeral Expenses	Rs.5,000/-
For Love and Affection	Rs.2,000/-



Head	Amount
For Transportation	Rs.5,000/-
Total	Rs.7,33,000/-

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5. Aggrieved with the said compensation, the claimants are in appeal.

6. While examining the facts, the Tribunal had determined that the accident occurred only due to the rash and negligent driving of the driver of the vehicle Maruti Swift Dzire New Car and proceeded to determine the compensation. It is also kept in mind that the said Maruti Swift Dzire Car was unregistered at the time of accident. I would affirm the finding on negligence.

7. The tribunal determined the age of the deceased as 38 years and observed that P.W.1 Madeswari deposed that the deceased was earning a sum of Rs.15,000/- per month. He was the owner of Kaliammal Transport and was also doing Real Estate business. However, documents were not produced to substantiate the said fact. The Tribunal had determined the notional monthly income at Rs.6,000/-.

8. The learned counsel for the appellants would state that the tribunal ought to have fixed Rs.10,000/- per month as notional monthly income by taking into account the oral evidence of PW1 that the deceased was running a Transport business and was also facilitating real estate transaction and ought to have also added future prospects.

9. Let me determine the notional monthly income at Rs.9,000/-. After deducting 1/3rd towards personal expenditure, the actual monthly income would come to Rs.6,000/-. The learned Tribunal had not granted future prospects and I would rather grant 40% towards the same. By adding 40% towards future prospects, the actual monthly income would come to Rs.8,400/-.

10. I also find that towards loss of estate a sum of Rs.1,000/- and towards love and affection a sum of Rs.2,000/- has been granted. I would grant a sum of Rs.30,000/- towards loss of consortium for the first appellant and a sum of Rs.60,000/- towards loss of love and affection for the second appellant/daughter and third respondent/mother. I have not therefore granted any amount towards loss of estate. I would retain the Funeral Expenses at Rs.5,000/- and transportation costs at Rs.5,000/-. Now the actual total compensation payable is as follows:



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Loss of dependency	Amounts
Monthly income	Rs.9,000/-
40% to be added as future prospects Rs.9000 x 40/100	Rs.3,600/-
Total monthly income Rs.9,000 + 3,600	Rs.12,600/-
For the personal expenditure of the deceased 1/3 rd to be deducted Rs.12,600 x 1/3	Rs.4,200/-
Monthly contribution to the family Rs.12,600 - Rs.4,200	Rs.8,400/-
Annual contribution to the family Rs.8,400 x 12	Rs.1,00,800/-
By applying multiplier 15 Rs.1,00,800 x 15	Rs.15,12,000/-
Head	Amount
Total amount for Loss of dependency	Rs.15,12,000/-
For Funeral Expenses	Rs.5,000/-
For Loss of Consortium	Rs.30,000/-
For Love and affection (mother & daughter)	Rs.60,000/-
For Transportation	Rs.5,000/-
Total	Rs.16,12,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,33,000/- is hereby enhanced to Rs.16,12,000/- (Rupees Sixteen lakhs Twelve thousand only) together with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit. The other aspects in the order shall remain the same. Out of the compensation, the first appellant/wife is entitled to a sum of Rs.5,80,000/-, the second appellant/daughter is entitled to a sum of Rs.8,70,000/- and the third respondent/mother is entitled to a sum of Rs.1,62,000/-. The 2nd respondent-Insurance Company shall 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 eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1429 of 2013 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Namakkal. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the Appellant/Claimant through RTGS, within a period of two weeks thereafter. The share of the minor claimant is directed to be deposited in any one of the



Nationalised Banks, till she attains majority and the mother of the minor viz., the First appellant is permitted to withdraw the accrued interest once in three months purely for the welfare of the child. The appellants are directed to pay the necessary Court fee, if any, on the enhanced compensation No costs.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

rsi

To

1. The Principal District Judge
Motor Accident Claims Tribunal,
Namakkal.

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

+1cc to M/s.C.Kulanthaivel, Advocate, S.R.No.12815

+1cc to M/s.Elveera Ravindran, Advocate, S.R.No.12677

+1cc to M/s.Ma.P.Thangavel, Advocate, S.R.No.12437

C.M.A.No.124 of 2018

JP-II(CO)
RLP(06/04/2022)