



C.M.A.No.1554 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 12.09.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.1554 of 2018

1.D.Mohan

2.Minor M.Aarthi

3.Minor Ayyappan ...Petitioners/Appellants

(minors are represented by their father
Mohan as natural guardian and next friend)

Vs.

1.Shree Lakshmi Narayan Transport,
No.14, Ravathanallur Colony,
I Street,
Acharapakkam,
Kanchipuram District.

2.The New India Assurance Company Limited,
No.45, Moore Street,
Chennai – 600 001. ... Respondents/Respondents



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Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 20.01.2016 in M.A.C.T.O.P.No.503 of 2014 on the file of the learned II additional District Judge, Motor Accidents Claims Tribunal, Poonamallee, Thiruvallur.

For Appellants : Mr.F.Terry Chella Raja

For Respondents : Mr.J.Michael Visuvasam for R2

JUDGMENT

Challenging the quantum of compensation granted, the claimants have filed the above appeal. The parties are referred to in the same rank and array as before the Tribunal.

2.The petitioners who are the husband and children of M.Kavitha filed the above claim petition seeking compensation of the a sum of Rs.12 lakhs for the death of the said Kavitha in a road



accident. It is their case that the said Kavitha who was aged about 29 years and carried on flower vending business, earning a sum of Rs.500/- per day had met with an accident on 18.06.2014 at about 19.30 hours. On the said date, when the said Kavitha was riding pillion in her husband's motor cycle bearing Registration No.TN 02AV 3782 on the Korattur Central Avenue Road the 1st respondent's water tanker lorry bearing Registration No.TN 19V 2374 came in the same direction and driven by its driver in a rash and negligent manner hit the motor cycle in which the deceased was travelling from the rear. The deceased sustained grievous injuries and died on the way to the hospital. Therefore, it is the case of the petitioner that the respondents are liable to compensate the petitioners.

3.The 1st respondent remained *ex parte* and it was only the 2nd respondent Insurance Company who has contested the claim. The 2nd respondent had stated that the manner in which the accident had taken place would show that the deceased has also contributed to the



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accident. Further, they had contended that the amount of compensation claimed by the petitioners is on the higher side. The Tribunal on considering the evidence on record held that the accident had occurred only on account of the negligent driving of the driver of the 1st respondent's lorry and the Tribunal has awarded a sum of Rs.15,87,000/- as compensation to the claimants. The Tribunal has fixed a notional income of Rs.8,750/-. Aggrieved by the same, the petitioner is before this Court.

4.Mr.F.Terry Chella Raja, learned counsel appearing for the appellants would submit that the accident had taken place in the year 2014 and the income of the deceased who was eking out her livelihood as a flower vendor would definitely be a sum of Rs.10,000/- per month and he would further contend that the Tribunal has not granted any amount towards future prospects. Further, he would fairly submit that the multiplier which has to be adopted in keeping with the age of the deceased is 17 and not 18 as fixed by the Tribunal. He would



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therefore prayed the appeal be allowed and the compensation enhanced.

5.Per contra, Mr.J.Michael Visuvasam, learned counsel for the 2nd respondent / Insurance Company would fairly submit that a reasonable notional income has been fixed which does not require any consideration. He would further submit that the 1st respondent has been given a compensation under the head of loss of consortium of a sum of Rs.1 lakh which has to be reduced to a sum of Rs.40,000/-. Further, the minors/2nd and 3rd petitioners have under the head of loss of love and affection awarded a sum of Rs.2lakhs. This has to be downscaled to a sum of Rs.40,000/- each. The Tribunal has wrongly granted a sum of Rs.10,000/- towards transportation charges. He would further submit that the compensation under the head of clothing is unnecessary and that apart, excessive.



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6.Heard the learned counsels appearing on either side and perused the papers.

7.Considering the age and the year in which the accident had occurred the notional income is re-worked at a sum of Rs.10,000/- and future prospects of Rs.4,000/- has to be added. Therefore, the monthly notional income would be a sum of Rs.14,000/- and the annual income would be a sum of Rs.1,68,000/-. From out of which, 1/3 has to be deducted towards personal expenses. Therefore, the annual contribution to the family by the deceased is a sum of Rs.1,12,000/-. To which, considering the age of the deceased, a multiplier of 17 has to be adopted. Therefore, the total loss of income to the family is a sum of Rs.19,04,000/-. The amount under the head of loss of consortium is reduced to a sum of Rs.40,000/-. Likewise, the amount under the head of loss of love and affection to the petitioners 2 and 3 is reduced to a sum of Rs.40,000/- each. The



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amounts under the head of transportation charges is set aside and a sum of Rs.15,000/- is paid under the head of loss of estate. The enhanced compensation would be a sum of Rs.20,54,000/-. Therefore, taking into consideration the above aspects, the modified amount is as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of income	Rs.12,60,000/-	Rs.19,04,000/-	Enhanced
2.	Loss of consortium	Rs.1,00,000/-	Rs.40,000/-	Reduced
3.	Loss of love and affection to the 2 nd and 3 rd petitioners	Rs.2,00,000/-	Rs.80,000/-	Reduced
4.	Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Loss of estate	-	Rs.15,000/-	Enhanced
6.	Transportation charges	Rs.10,000/-	-	Deleted
7.	Damages to clothing	Rs.2,000/-	-	Deleted
	TOTAL	Rs.15,87,000	Rs.20,54,000/-	



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
		/-	-	

8. Accordingly, this Civil Miscellaneous Appeal is allowed. The 2nd respondent/Insurance Company is directed to deposit the entire compensation amount, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.A.C.T.O.P.No.503 of 2014 on the file of the learned II additional District Judge, Motor Accidents Claims Tribunal, Poonamallee, Thiruvallur, within a period of six weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit, the 1st petitioner is permitted to withdraw the entire award amount with



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proportionate accrued interest and costs, by making necessary applications.

9.The share of the minors/2 and 3 petitioners shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors/2 and 3 petitioners shall be paid to the father of the minors Mr.D.Mohan, the 1st petitioner, once in three months, till they attain majority.

The claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimants. No costs.

12.09.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order

9/11



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mps

To

The II additional District Judge,
Motor Accidents Claims Tribunal,
Poonamallee,
Thiruvallur.



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P.T. ASHA, J,

mps

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