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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2022

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.2306 of 2021

Palaniyammal

...Appellant/Petitioner-1

Vs.

1. D.P.Sivaramnath

2. The New India Assurance Company Ltd.,
Divisional Office,
Ram Complex, No.29, 2nd Floor, Paramathi Road,
Namakkal Town and District.

3. Rasammal

...Respondents 1 to 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree dated 06.02.2020 made in MCOP.No.112 of 2015 on the file of MACT/Additional District Court, (FAC), Namakkal.

For appellant : Mr.Ma.P.Thangavel

For respondents
for R1 & R3 : Notice dispensed with

for R2 : M/s.S.R.Sumathy

J U D G M E N T

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]

The claimant, in MCOP.No.112 of 2015 on the file of the Motor Accident Claims Tribunal/Additional District Court, Namakkal, not being satisfied with the award passed in the O.P. has come up with this appeal seeking enhancement.



2. The appellant/claimant is the wife of the deceased Shanmugam and the third respondent herein Rasammal is his widowed mother. According to the claimant, on 10.08.2014 at 6.30 a.m., the deceased Shanmugam was riding his Hero Honda motor-cycle bearing Registration No.TN-28-K-9353 from North to South direction on Salem-Karur by-pass road. At that time, the Bus bearing Registration No.KL-16-K-3609, which was also proceeding on the same direction was driven by its driver in a rash and negligent manner, dashed against the deceased two-wheeler. In the accident, he sustained grievous injuries and died on the spot.

3. According to the claimant, the deceased was a vegetable vendor and was earning Rs.15,000/- per month. Since the accident had occurred due to the negligence of the driver of the Bus, its owner and the insurer are liable to pay a compensation of Rs.30,00,000/-.

4. Though the claim petition was resisted by the Insurance Company stating that the deceased was the tort-feasor, the Tribunal after analysing the evidence has held that the driver of the Bus was negligent at the time of the accident. The said finding has reached finality since no appeal has been filed by the Insurance Company.

5. It is seen that the mother of the deceased also filed a separate claim petition that was taken on file in MCOP.No.763 of 2014 and a joint trial was conducted. The claimant failed to produce the documentary evidence to substantiate her case that the deceased was earning Rs.15,000/- per month by doing vegetable business. Hence, the Tribunal fixed the notional income as Rs.8,000/- and by a common judgment, awarded compensation of Rs.8,44,000/- and apportioned Rs.3,00,000/- to the mother of the deceased and Rs.5,44,400/- to the wife of the deceased.

6. The learned counsel appearing for the appellant has vehemently contended that even though the claimant had not produced any documentary evidence to substantiate her case, the Tribunal considering the consumer price index at the relevant point of time, ought to have fixed the notional income as Rs.13,000/- per month. In this regard, the learned counsel has relied upon the decision of the Division Bench of this Court in the case of Chinnathamani and others vs. Amman Granites and others reported in 2019 (2) TN MAC 293 (DB).

7. The learned counsel appearing for the second respondent Ms.S.R.Sumathy would submit that the award is reasonable and no ground is made to enhance the compensation.



8. Considering the fact that the accident had taken place in the year 2014 and the claimant has not produced any material to prove the avocation of the deceased, in order to meet the ends of the justice, it would be appropriate to fix Rs.10,000/- per month as monthly income and add 10% towards future prospects, then, the total income comes to Rs.11,000/- [10,000 + 1,000]. From which, 1/3 is deducted towards personal expenses of the deceased and the contribution to the family comes to Rs.7,334/- [11,000 - 3,666]. Considering the age of the deceased, if proper multiplier 11 is applied, the Loss of Income would be Rs.9,68,088/-.

9. In addition to that, claimant/wife and mother of the deceased are entitled to Rs.80,000/- towards Consortium and Filial Consortium; Rs.15,000/- towards Loss of Estate; and Rs.15,000/- towards Funeral Expenses. In total, the claimant is entitled to Rs.10,78,088/-, which is rounded off to Rs.10,80,000/-, along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

S.N o.	Heads under which amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by the Tribunal in Rs.
1.	Loss of Income	7,74,444	9,68,088
2.	Loss of Consortium	40,000	40,000
3.	Loss of Filial Consortium	-	40,000
4.	Loss of Estate	15,000	15,000
5.	Loss of Funeral Expenses	15,000	15,000
	Total	8,44,444 rounded off to 8,44,400	10,78,088 rounded off to 10,80,000

10. The sum of Rs.8,44,400/- awarded by the Tribunal is enhanced to Rs.10,80,000/-. Out of the award amount, claimant/wife of the deceased is entitled to Rs.7,00,000/- and the third respondent/mother of the deceased is entitled to Rs.3,80,000/-. The Insurance Company is directed to deposit the above modified award amount with proportionate interest and costs, less the amount already deposited, if any, within a



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period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant and the third respondent are permitted to withdraw the award amount as apportioned above, less the amount already withdrawn, if any, together with proportionate interest and costs.

11. With the above directions, the appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Additional District Judge, (FAC),
Motor Accident Claims Tribunal,
Namakkal.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.Ma.Pa.Thangavel, Advocate, S.R.No.22547

C.M.A. No.2306 of 2021

SSN(CO)
UMA(10/06/2022)