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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.3594 of 2019

1.Parvathi

2.Minor Subhasini

3.Minor Aswini

4.Ganesan

[Minors are represented by their
Friend/Mother 1st Petitioner]

... Appellants/Claimants

Vs

1. Elavarasan

2. The Divisional manager

The New India Assurance Company Limited,
CSI Building 2nd Floor,
No.1, Officer Line,
Near Ooris College,
Vellore.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award dated 16.07.2015 and made in M.A.C.T.O.P.No.991 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Judge (MCOP), Tiruvannamalai (FAC).

For Appellants : M/s.M.Malar & Mr.F.Terry Chella Raja

For Respondent 1 : No Appearance

For Respondent 2: M/s.S.R.Sumathy

JUDGEMENT

The claimants have filed the above Civil Miscellaneous Appeal seeking enhancement of compensation awarded by the Tribunal. The brief facts are as follows.



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2. The claimants are the legal heirs of one Marimuthu, namely, his wife, children and father who had filed M.C.O.P.No.991 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Judge (MCOP), Tiruvannamalai.

3. It is their case that on 14.03.2013 at about 3.30 PM, the said Marimuthu was riding his two wheeler, namely, Hero Honda Splendour Plus bearing TN 25 J 9982, at that time the TATA Qualis belonging to the 1st respondent driven by him in a rash and negligent manner, coming from the opposite direction dashed the said Marimuthu who had sustained injuries all over his body. He was admitted to the Tiruvannamalai Government Hospital, thereafter he was shifted to Chennai Government Hospital, however he died on the way. The death occurred only on account of the rash and negligent driving by the 1st respondent driver. The claimants had claimed a compensation of Rs.15,00,000/-.

4. The 1st respondent, owner of TATA Qualis denied his driving in a rash and negligent manner. He had also questioned the income pleaded by the claimants. He would further submit that since they are insured, it is the Insurance Company who had to pay the compensation.

5. The 2nd respondent had filed a counter denying all the allegations contained in the claim stating that the accident had occurred only on account of the negligence of the deceased and stated that the claim of Rs.15,00,000/- was excessive. The claimants had examined the 1st claimant as P.W.1 and one P.Elumalai as P.W.2. The claimants had marked Ex.P.1 to Ex.P.5. On the side of the respondents, neither documentary evidence nor oral evidence has been filed. The Tribunal had adopted a notional income of Rs.4,000/-, after adding 30% towards future prospects and deducting 1/3rd of the total personal expenses arrived at a total Loss of Dependency of Rs.6,65,664/- together with amounts under the other heads a total sum of Rs.7,55,664/- was awarded as compensation. Challenging the award as very low, the claimants are before this Court.

6. Mr.Terry Chella Raja, learned counsel appearing for the appellants would submit that the Tribunal has grossly erred in fixing the notional income at Rs.4,000/-, particularly when the accident is of the year 2013 and the deceased was aged 30 years who had two children and an aged father to take care.

7. The learned counsel would submit that the Tribunal has not considered the father as a dependent while calculating compensation, had they done so they would have deducted 1/4th of the total income towards the personal expenses of the deceased and not 1/3rd as it has now done. He would further submit that



even under the conventional head, the amounts paid were not commensurate to the Judgement passed by the Hon'ble Supreme Court, particularly, the Judgement in Pranay Sethi.

8. The learned counsel appearing for the Insurance Company would submit that the notional income taken was fair. Therefore, there was no reason to revise the said order and would pray that the order be confirmed.

9. Heard the learned counsel and perused the records.

10. The deceased Marimuthu was aged about 35 years but for this accident he would have lived for many more years. The said Marimuthu could definitely in some months earned a sum of Rs.35,000/- per month. Therefore, it would be appropriate to fix the notional monthly income at a sum of Rs.10,000/- by treating the deceased as an Agricultural Coolie. Further, considering his age, 40% has to be definitely added to the future prospects. Therefore, the notional income would be a sum of Rs.14,000/-. Out of this 1/4th has to be deducted towards personal expenses since the claimants are four in number. Therefore, the amounts due under the head of Loss of Dependency has to be enhanced as follows:

$$\text{Rs.10500/-} \times 12 \times 16 = \text{Rs.20,16,000/-}.$$

11. A sum of Rs.20,000/- which has been awarded under the head of Funeral Expenses has to be reduced to a sum of Rs.15,000/-. The consortium to the 1st petitioner should be enhanced to a sum of Rs.40,000/-. The petitioners 2 and 3 are entitled to a sum of Rs.40,000/- under the head of Filial Consortium and the 4th petitioner should be granted a sum of Rs.20,000/-. Therefore, under the head of Filial Consortium a sum of Rs.1,00,000/- is granted. A sum of Rs.15,000/- is also granted towards Loss of Estate. Therefore, the revised compensation would be as follows:

Loss of Dependency	Rs.20,16,000/-
Loss of Estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-
Loss of Consortium	Rs.40,000/-
Loss of filial consortium	Rs.1,00,000/-
Total	Rs.21,86,000/-

12. The compensation is therefore enhanced by a sum of Rs.14,30,336/- together with interest at 7.5 % per annum. However, the appellants will not be entitled to get interest



for the delayed period as directed by order dated 06.09.2019 in C.M.P.No.14072 of 2019.

13. The Insurance Company shall deposit the enhanced amount within a period of 6 weeks from the date of receipt of a copy of this order. The major claimants shall withdraw their share of compensation amount subject to their paying Court fees for an enhanced award amount. The Tribunal shall disburse the amount only on proof been filed.

14. The share of the minor claimants, namely, appellants 2 and 3 are directed to be deposited in any one of the Nationalised Banks till they attain majority. On such deposit, the 1st appellant being the mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest once in every three months for the welfare of the minor appellants.

15. In the result, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Special Subordinate Judge (MCOP),
Tiruvannamalai (FAC).

+1cc to M/s.Malar, Advocate, S.R.No.21491

C.M.A.No.3594 of 2019

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