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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.No.845 of 2018

C.Sampatha

...Appellant / Petitioner

Vs.

1.S.Rajamanickam

2.The New India Assurance Company Limited,

21/2, MSC Complex, 1st Floor,

South Indian Bank Upstairs,

Dharmapuri Main Road,

Omalur - 636 455

..Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the award passed in judgment and decree dated 14.12.2017 in MCOP.No.521 of 2017 passed by the Motor Vehicles Accident Claims Tribunal cum Special District Judge, Krishnagiri.

For Appellant : Mr.I.Siddiq

For R1 : No appearance

For R2 : Mr.R.Sivakumar

J U D G M E N T

The petitioner in MCOP No.521 of 2017 on the file of the Motor Accidents Claim Tribunal / Special District Court, Krishnagiri is the appellant herein. The claim had been filed by the mother of the deceased Sakthivel who was aged 14 years at the time of the accident. It had been stated that at around 4.30 p.m on 16.03.2016 when the deceased was coming back to his house after finishing school in a bicycle, an Ashok Leyland lorry bearing registration No.TN-30-AX-7362 driven in a rash and negligent manner had come on the opposite side and dashed on the cycle causing an accident. Due to the impact, the young boy fell down on the right side of the lorry and the front right side wheel of the lorry ran over the boy and he died at the spot itself.

2.The Tribunal had come to the conclusion that it was only due to the rash and negligent manner in which the lorry was driven did the accident occur. That finding is not interfered



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4. Learned counsel for the appellant also pointed that the learned Single Judge of this Court in CMA (MD) No.397 of 2018, The New India Assurance Company Limited v. Palaniyandi @ Saravanan and others, whereby, judgment dated 28.11.2018 the notional monthly income of the deceased had been determined at Rs.6,000/-. The two deceased in that case were aged 8 years and 12 years. However, even in the very same judgment, the learned Single Judge had relied on a judgment of the Division Bench of this Court reported in 2015 (2) MAC 490 (DB), National Insurance Company Limited v. R.Vimala, wherein the Division Bench had determined the notional income at Rs.5,000/- in the case of death of minor.

5. It is also stated by the learned counsel for the appellant that the Division Bench had deducted 1/3 towards personal expenses and then determined the monthly income. It is however pointed out by the learned counsel for the respondent that it would be appropriate to deduct 1/2 since, the appellant herein also had another son who would also contribute towards her well being in future. This deduction of either 1/3 or 1/2 is only a notional deduction to indicate the balance sum which would be utilized by the claimant. I would retain the deduction of 50%.

6. Learned counsel for the appellant however pointed out that the Division Bench had determined the notional income for an accident which took place in the year 2008. There should be some upward revision with respect to the notional income and I would fix it at Rs.5,000/-. The compensation worked out is



Rs.5,000 x 12 = Rs.60,000/- p.a., and Rs.60,000 x 50% = Rs.30,000/-. In addition a multiplier of 15 can be adopted. Hence the loss of income would be Rs.4,50,000/-.

7.Two other heads of compensation had been granted by the Tribunal, one is loss towards love and affection at Rs.1,00,000/- and other for funeral expense at Rs.15,000/-. Even though an appeal had not been filed by the insurance company, the compensation granted under loss of love and affection Rs.1,00,000/- will have to be interfered with by me and I would fix a sum of Rs.50,000/-. Let me not interfere with the amount granted towards funeral expenses and retain the said sum of Rs.15,000/-. Let me grant an additional head of expense towards transportation charges and determine the same at Rs.15,000/-.This would indicate that the total compensation payable is as follows:

1.Loss of dependency	Rs.4,50,000/-
2.Loss of love and affection	Rs. 50,000/-
3.Funeral Expenses	Rs. 15,000/-
4.Transportation Expenses	Rs. 15,000/-

Total	Rs.5,30,000/-

8.The Civil Miscellaneous Appeal is allowed to that extent enhancing the compensation which had been determined as Rs.3,85,000/- to Rs.5,30,000/-. The other aspects in the order shall remain the same. The Insurance company shall deposit the difference in compensation amount i.e., Rs.1,45,000/- with interest of 7.5% from the date of filing of the petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same. No order as to costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To:-

1.The Motor Accident Claims Tribunal /
Special District Court, Krishnagiri.



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

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+lcc to Mr.Dass & Viswa Associates, Advocate SR.No.12445

CMA No.845 of 2018

NRL(CO)
GN(23/03/2022)