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C.M.A. No.2328 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

C.M.A.No.2328 of 2021

1. M.Krishnaveni
2. S.Sivakami
3. A.Subramani

.. Appellants

Vs.

1.G.Natarajan
(R1 remained exparte before the Tribunal.
Hence notice is dispensed with.)

2.M/s.National Insurance Company Ltd.,
No.74-A, Paramathy Main Road,
Namakkal Town & District.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.12.2019, made in M.C.O.P. No.486 of 2018, on the file of the Motor Vehicle Accident Claim Tribunal/Principal District Judge, Namakkal.



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For Appellants : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

For R2 : Mr.S.Vadivel

J U D G M E N T

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

This appeal has been filed for enhancement of compensation granted by the award dated 10.12.2019, made in M.C.O.P. No.486 of 2018, on the file of the Motor Vehicle Accident Claim Tribunal/Principal District Judge, Namakkal.

2 The appellants filed M.C.O.P. No.486 of 2018, on the file of the Motor Vehicle Accident Claim Tribunal/Principal District Judge, Namakkal, claiming a sum of Rs.15,00,000/- as compensation for the death of one S.Bhuvanesh, who died in the accident that took place on 03.03.2018.



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3 The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the first respondent/driver of the Two Wheeler and directed the 2nd respondent, as insurer of the offending vehicle, to pay a sum of Rs.12,79,600/- as compensation to the appellants.

4 Not being satisfied with the amounts awarded by the Tribunal in the award dated 10.12.2019, made in M.C.O.P. No.486 of 2018, the appellants have come out with the present appeal.

5 The learned counsel appearing for the appellants contended that at the time of accident, the deceased was aged 24 years and was doing Diary Farm and Chicken Stall business and was earning a sum of Rs.20,000/- per month. The Tribunal, in the absence of any evidence by the 2nd respondent-Insurance Company to disprove the avocation and income of the deceased, erroneously fixed only a meagre sum of Rs.6,000/- per month as notional income of the deceased and awarded compensation towards loss of



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dependency. The deceased was aged 24 years. The first appellant has lost her husband and the appellants 2 and 3 have lost their son. The Tribunal failed to award any amount under the head of damages, parental consortium and mental agony. The amounts awarded by the Tribunal towards loss of dependency, loss of estate, funeral expenses, loss of consortium are meagre and prayed for enhancement of the compensation.

6 Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants did not file any documents to prove the avocation and income of the deceased. The Tribunal, in the absence of any documentary evidence to prove the avocation and income of the deceased, fixed a sum of Rs.6,000/- per month as notional income of the deceased and the same is not meagre. The compensation awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.



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7 Heard learned counsel appearing for the appellants as well as the

2nd respondent-Insurance Company and perused the materials available on record.

8 From the materials on record, it is seen that it is the contention of the appellants that at the time of accident, the deceased was aged 24 years, doing Diary farm and Chicken Stall business and was earning a sum of Rs.20,000/- per month. The appellants did not produce any documents to prove the avocation and income of the deceased. In the absence of any oral and documentary evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2018. Considering the year of accident and nature of work done by the deceased, a sum of Rs.13,500/- per month is fixed as notional income of the deceased. The Tribunal, following the judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC)** [*National Insurance Co. Ltd., Vs. Pranay Sethi and others*] and the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC**



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Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation &

another], rightly granted 40% enhancement towards future prospects and applied the correct multiplier '18'. There are three dependents of the deceased and the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased. Thus, by fixing Rs.13,500/- as monthly income of the deceased, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.27,21,600/- {[Rs.13500+5400 (13500 x 40%) x 12 x 18 x 2/3. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency Future prospects	8,64,000/-} 3,45,600/-}	27,21,600/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	40,000/-	40,000/-	Confirmed
	Total	12,79,600/-	27,91,600/-	Enhanced by Rs.15,12,000/-



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9 In the result, the appeal is partly allowed and the amount

awarded by the Tribunal at Rs.12,79,600/- is enhanced to Rs.27,91,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.486 of 2018. On such deposit, the appellants are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellants are directed to pay the necessary court fee on the enhanced award amount as per the order of this Court dated 06.08.2021 made in C.M.P.No.12084 of 2021 in C.M.A.SR.56618 of 2021. No costs.

(V.M.V., J) (S.S., J)
13.06.2022

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**V.M.VELUMANI,J.
and
S.SOUNTHAR,J.**

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To

- 1.The Principal District Judge,
Motor Vehicle Accident Claims Tribunal,
Namakkal.
- 2.The Section Officer,
V.R Section,
High Court, Madras.

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