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C.M.A.No.2182 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2182 of 2022

1.Ganga

2.Kannabiran

3.Minor. Ramya

(Minor 3rd appellant represented
by her Mother / Guardian, Ganga,
1st appellant herein)

4.Palaniyammal

5.Chinnusamy

.. Appellants

Vs.

1.EXIM Logistics (P) Limited,
Plot No.30-272, Marripalem,
Visakapatinam,
Andhra Pradesh State – 751 023.

2.Future General India Insurance Co. Ltd.,
1st Floor, Kalinga Complex,
Plot No-B, Unit-1, Rajpath,
Bhubaneswar,
Odisha State – 751 006.

.. Respondents

(R1 remained exparte before Tribunal.
Hence, notice to R1 dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of



C.M.A.No.2182 of 2022

Motor Vehicles Act, 1988, against the judgment and decree dated 13.12.2017, made in M.C.O.P.No.642 of 2015, on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

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

For R2 : Mr.M.B.Raghavan
for Ms.M.B.Gopalan Associates

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI, J.)

This Civil Miscellaneous Appeal has been filed by the appellants-claimants for enhancement of compensation granted by the Tribunal in the award dated 13.12.2017, made in M.C.O.P.No.642 of 2015, on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2.The appellants are the claimants in M.C.O.P.No.642 of 2015, on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal. They filed the said claim petition claiming a sum of Rs.80,00,000/- as compensation for the death of one Selvam, who died in the accident that took place on 28.01.2015.

3.The Tribunal considering the pleadings, oral and documentary



evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tractor Lorry belonging to 1st respondent and directed the respondents to pay a sum of Rs.20,95,000/- as compensation to the appellants.

4. Not being satisfied with the amounts awarded by the Tribunal, 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 the owner of the OM Shakthi Labour Body Works at Namakkal, earning more than Rs.80,000/- per month and the appellants proved the same by marking Ex.P10 / copy of Lorry Builders Association Member Registration Certificate. But, the Tribunal has fixed only a meagre amount of Rs.12,000/- as monthly income of the deceased without considering the year of accident, cost of inflation index, number of dependents and other factors. The Tribunal ought to have granted compensation towards medical expenses as per Ex.P14 / medical bills. The Tribunal ought to have granted 40% enhancement towards future prospects instead of granting 25% enhancement towards future prospects. The Tribunal has not awarded



any amount towards transportation and loss of love and affection to appellants 2 to 5 and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants have not proved the income of the deceased. In the absence of any document with regard to income, a sum of Rs.12,000/- per month fixed by the Tribunal as notional income of the deceased is excessive. The deceased was aged 40 years at the time of accident and the Tribunal considering the same, has rightly granted 25% enhancement towards future prospects. The Tribunal has awarded a sum of Rs.70,000/- under conventional heads and hence, the appellants are not entitled to any amount towards loss of love and affection. The total compensation awarded by the Tribunal is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.



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8.From the materials on record, it is seen that it is the case of the appellants that at the time of accident, the deceased was aged 40 years, owner of OM Shakthi Labour Body Works at Namakkal, earning more than Rs.80,000/- per month. To prove the said contention, the appellants produced the copy of Lorry Builders Association Member Registration Certificate and marked the same as Ex.P10. The appellants have not filed any documents like Income Tax Returns or Bank Statement to prove the income of the deceased. In the absence of any document with regard to income, the Tribunal fixed a sum of Rs.12,000/- per month as notional income of the deceased. Considering the year of accident, age and nature of work done by the deceased, the notional income fixed by the Tribunal is just and reasonable. As far as the contention of the learned counsel appearing for the appellants that on the date of accident, the deceased has not completed 40 years of age and hence, the Tribunal ought to have granted 40% enhancement towards future prospects is concerned, in the absence of any materials to prove the age of the deceased, the Tribunal considered Ex.P2 / postmortem certificate and fixed the age of the deceased as 40 years, applied multiplier '15' and granted 25% enhancement towards future prospects and the same is proper. There are



five dependents of the deceased and the Tribunal has rightly deducted 1/4th towards personal expenses of the deceased and granted compensation towards loss of dependency and the same is not meagre. The appellants produced Ex.P14 / medical bills to the tune of Rs.29,766/- towards medical expenses incurred for the deceased. The Tribunal has not considered Ex.P14 / medical bills and has not granted any amount towards medical expenses. The appellants are entitled to a sum of Rs.29,766/- towards medical expenses as per Ex.P14 / medical bills. The Tribunal has not granted any amount towards parental consortium and filial consortium. The appellants 2 & 3, children of the deceased are entitled to a sum of Rs.40,000/- each towards parental consortium and the appellants 4 & 5, being the parents of the deceased are entitled to a sum of Rs.40,000/- each towards filial consortium. The Tribunal has not awarded any amount towards transportation. The appellants are entitled to a sum of Rs.10,000/- towards transportation. 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	20,25,000/-	20,25,000/-	Confirmed
2.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Parental consortium to appellants 2 & 3	-	80,000/- (Rs.40,000/- each)	Granted
6.	Filial consortium to appellants 4 & 5	-	80,000/- (Rs.40,000/- each)	Granted
7.	Transportation	-	10,000/-	Granted
8.	Medical expenses	-	29,766/-	Granted
	Total	Rs.20,95,000/-	Rs.22,94,766/-	Enhanced by Rs.1,99,766/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.20,95,000/- is hereby enhanced to Rs.22,94,766/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, 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.642 of 2015, on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal. On such deposit, the appellants 1, 2 & 4 are permitted to



C.M.A.No.2182 of 2022

withdraw their respective share of the award amount now determined by this Court as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor 3rd appellant is directed to be deposited in any one of the Nationalized Banks, till the minor 3rd appellant attains majority. On such deposit, the 1st appellant, being the Mother of the minor 3rd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor 3rd appellant. Out of the award amount, the 5th appellant, Father of the deceased is entitled to a sum of Rs.40,000/- towards filial consortium, now determined by this Court along with proportionate interest and costs. The appellants are not entitled to any interest on the amount of Rs.1,99,766/-, now enhanced by this Court as per the order of this Court dated 20.09.2022 made in C.M.P.No.11990 of 2021 in C.M.A.SR.No.59234 of 2021. No costs.

(V.M.V., J) (S.M., J)
13.10.2022

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Index : Yes / No
Internet : Yes / No



C.M.A.No.2182 of 2022

To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

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



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