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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM:

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

C.M.A.No.2365 of 2021

1. G.Dhanalakshmi
2. Minor G.Mohan
3. Minor G.Sathiya

(Minor petitioners represented by mother,
guardian, NF, G.Dhanalakshmi)

... Appellants/Petitioners

Vs.

1. D.Soundarapandian

2. The Divisional Manager,
The New India Assurance Co. Ltd.,
DO III Floor, No.179, JN Street,
Puducherry - 605 001.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 06.07.2021 made in M.C.O.P.No.3617 of 2018 on the file of the Motor Accident Claims Tribunal/ I Additional District and Sessions Judge, Cuddalore.

For Appellants : Mrs. Ramya V. Rao

For Respondents : Not ready in notice for R1
Mrs.S.R.Sumathy for R2

JUDGMENT

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

This appeal arises out of the Judgment and Decree dated 06.07.2021 made in M.C.O.P.No.3617 of 2018 on the file of the Motor Accident Claims Tribunal/ I Additional District and Sessions Judge, Cuddalore.

2.Case of the claimants are in brief:-



On 25.05.2018 at about 08.45 hours, when the deceased was riding his TVS XL moped bearing Registration No.TN 31 AF 9374 from Chennai to Trichy National Highways, near Kedilam Over bridge, the 1st respondent's Ford car bearing Registration No.TN 03 W 1717 came from north to south direction, in a rash and negligent manner dashed against the deceased's moped. As a result, the deceased sustained fatal injuries, and inspite of best treatment he died on the same day in Villupuram Government Medical College Hospital, Mundiampakkam.

3.The claimants are wife and 2 minor children. Alleging that the 1st respondent is responsible for the accident, the claimants laid the claim petition seeking compensation of Rs.50 lakhs before the Tribunal.

4.Before the Tribunal, the claimants have let in oral and documentary evidence. Upon consideration of the evidence adduced by the them, the Tribunal held that the driver of the 1st respondent's vehicle was negligent and awarded compensation of Rs.17,27,800/-. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the claimants are before this Court with this Civil Miscellaneous Appeal.

5.The learned counsel for the appellants/claimants contended that they claimed Rs.50 lakhs as compensation however, what was awarded by the Tribunal is meagre. The Tribunal failed to take note of the age of the deceased, his occupation and his ability to earn more. Even though the claimants claimed that the deceased is a Mason by occupation and earned Rs.50,000/-, the Tribunal fixed a sum of Rs.12,600/- per month as monthly income. The Tribunal ought to have at least fixed Rs.15,000/- per month, as the monthly income even going by the fact that a Mason can earn at least a sum of Rs.1000/- per day and for 20 days, the deceased could have earned more than Rs.15,000/- per month. It is also stated that the amount awarded under various heads are not proportionate to the evidence made available and therefore, the learned counsel prayed for appropriate enhancement.

6.On the above submission of the learned counsel for the appellants in this appeal, we have heard the learned counsel for the 2nd respondent/Insurance Company and perused the materials placed.

7.Before the Tribunal, the respondents did not adduce either oral or documentary evidence in support of their case. It is the definite case of the claimants that the accident occurred, when the Ford car bearing Registration No.TN 03 W 1717 was driven by its driver in a rash and negligent manner. A case in Crime No.354 of 2018 on the file of the Thirunavalur Police Station was registered, which is evident from Ex.P1. It is



claimed by the claimants that the deceased is a Mason by avocation and he earned Rs.50,000/- per month. In the absence of any documentary evidence, the Tribunal fixed Rs.9,000/- per month as monthly income of the deceased and awarded the compensation under the head of loss of income as Rs.16,12,800/-.

8.However, this Court considering the cost of living prevailing at the time accident, fixes the monthly income of the deceased as Rs.13,000/- per month and after adding 40% it comes to Rs.18,200/-. $\frac{1}{3}$ rd of the monthly income is deducted towards personal expenses and thus, it comes to Rs.12,130/-. Thus the appropriate multiplier for the age of the deceased is '16'. Hence the amount awarded under the head 'loss of income' would come to Rs.23,28,960/-(Rs.12,130/- x 12 x 16). The Tribunal also awarded a sum of Rs.40,000/- towards loss of consortium and awarded a sum of Rs.45,000/- towards loss of love and affection. Since the 1st claimant/wife already awarded a sum of Rs.40,000/- towards 'loss of consortium', an amount of Rs.80,000/- is granted and the amount awarded under the head 'loss of love and affection' is modified as each minor children shall get Rs.40,000/-. That apart, the compensation awarded under the head 'Transportation' and 'funeral expenses' are confirmed. Thus the amounts are recalculated as follows:-

Sl. No.	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of Income	Rs.16,12,800/-	Rs.23,28,960/-
2.	Loss of consortium	Rs.40,000/-	Rs.40,000/-
3.	Loss of love and affection	Rs.45,000/-	Rs.80,000/- (Rs.40,000/- x 2)
4.	Transport Expenses	Rs.15,000/-	Rs.15,000/-
5.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
	Total	Rs.17,27,800/-	Rs.24,78,960 rounded off to Rs.24,78,900/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the 2nd respondent/Insurance Company is directed to deposit the modified compensation amount of Rs.24,78,900/- with interest at the rate of 7.5% from the date of claim petition, till the date of realization and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On deposit being made by the 2nd respondent, the 1st claimant is permitted to withdraw a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only), less the amount already withdrawn, if any, together with interest and costs.



Insofar as the second and third claimants/ minors are concerned, they are eligible for a sum of Rs.7,39,450/- each and their shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalized Banks and it shall be renewed periodically, till they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/mother once in three months, directly from the Bank. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal/
I Additional District and Sessions Judge,
Cuddalore.
2. The Section Officer,
V.R.Section,
Madras High Court, Chennai.

+2cc to Mrs. Ramya V. Rao, Advocate, S.R.No.9503

C.M.A.No.2365 of 2021

NRL(CO)
CT 18/03/2022