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C.M.A.No.2585 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

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1.Latha Ponseeli
2.Jeslin Samraj
3.Jebas Samuel
4.Jerrys Jenoba
(Minors 2 to 4 are represented
by their mother and N.F.Latha Ponseeli).
5.Alismarthal
6.Samuelraj

.. Appellants

-Vs.-

1.N.Vinayagamurthi
2.Reliance General Insurance Company Ltd.,
Reliance House,
Regional Office:Legal Dept.,6th Floor,Haddows Road,
Nungambakkam,
Chennai-6.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the decree and judgment dated 20.08.2013 made in M.C.O.P.No.293 of 2011 on the file of Motor Accident Claims Tribunal (II Small Causes Court), Chennai.



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For Appellants : Mr.K.V.Varadha Kamaraj

For Respondents : Mr.S.Arunkumar[R2]
R1 – Exparte – vide BSR 39692

JUDGMENT

The petitioners before the Tribunal are the appellants herein seeking enhancement of the Award passed by the Motor Accident Claims Tribunal (II Court of Small Causes, Chennai) dated 20.08.2013.

2. The parties are referred to in the same ranking as before the Trial Court.

3. The petitioners are the legal representatives of one Koil Raj Edwin being his wife, children and parents. The deceased Koil Raj Edwin at the time of his death, was aged about 35 years and he was a loadman with M/s. Jeyachandran Furniture, T.Nagar, Chennai. The petitioners had claimed a sum of Rs.15,00,000/- as compensation for his death in a road accident on 22.04.2010. It is their case that on 22.04.2010 at about 05.30 hours, he had unloaded the goods at a customer's place at Melmaruvathur



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and returning to Chennai in a load auto, bearing Registration No.TN-07-BD-5532 belonging to the first respondent and insured with the second respondent-Insurance Company. The driver of the said auto had driven the same in a rash and negligent manner and at a high speed, as a result of which, the vehicle had hit the Centre median, by reason of the impact the said deceased Koil Raj Edwin sustained head injuries and ultimately succumbed to his injuries. It is the contention of the petitioners that the accident had occurred only on account of the rash and negligent driving by the driver of the load auto.

4. The second respondent-Insurance Company had filed a counter calling upon the petitioners to prove that the vehicle in question possessed a valid insurance policy, R.C.Book permit, fitness certificate etc., and the driver of the load auto possessed a valid driving licence. They further denied the age, income and occupation of the deceased.

5. The Tribunal below by its Award dated 20.08.2013 had held that the accident had occurred only on account of the negligent driving by



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the driver of the load auto. Ultimately, a sum of Rs.7,86,200/- was awarded together with interest @ 7.5% per annum. The Tribunal had adopted a notional income of Rs.4,500/- and after deducting 1/5th towards personal expenses and applying multiplier of 16 arrived at a compensation of a sum of Rs.6,91,200/- towards the loss of income. The petitioners are aggrieved by the inadequate compensation awarded by the Tribunal.

6. Heard the learned counsel for the appellants and the learned counsel for the second respondent-Insurance Company and perused the materials available on record.

7. The appellants had contended that the deceased was earning a sum of Rs.9,000/- per month. However, no proof has been filed to support the said claim. However, there is no rebuttal on the side of the respondents that the deceased was a load man. Therefore, the notional income of Rs.5,000/- can be adopted to which, taking into account the age of the deceased, 40% can be added towards future prospects. Therefore, the monthly income of the deceased would work out to a sum of Rs.7,000/-.



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The annual income would be a sum of Rs.84,000/-. The Tribunal has erroneously deducted $1/5^{\text{th}}$ towards his personal expenses. Therefore, $1/4^{\text{th}}$ is deducted towards his personal expenses and a sum of Rs.63,000/- would be available to the family as annual contribution. Considering the age of the deceased, the appropriate multiplier is 16. Therefore, the amount under the head of loss of income would be a sum of Rs.10,08,000/-[Rs.63,000/- x 16]. The Tribunal has awarded a sum of Rs.25,000/- towards the loss of consortium, which has to be enhanced to a sum of Rs.40,000/-. The Tribunal had awarded only a sum of Rs.50,000/- to the appellants 2 to 6 under the head of love and affection, which has to be enhanced to a sum of Rs.2,00,000/-. The amount granted under the head of funeral expenses has to be enhanced to a sum of Rs.15,000/- and no amount has been granted under the head of loss of estate and a sum of Rs.15,000/- is awarded under this head. The Tribunal has awarded a sum of Rs.10,000/- towards the mental agony, which has to be deleted. Therefore, the total compensation is enhanced to a sum of Rs.12,78,000/-. The Compensation awarded by the Tribunal is reworked as follows:



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S.No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1	Loss of income	6,91,200	10,08,000	Enhanced
2	Loss of love and affection	50,000 (10,000 x 5)	2,00,000 (40,000 x 5)	Enhanced
3	Loss of Consortium	25,000	40,000	Enhanced
4	Funeral Expenses	10,000	15,000	Enhanced
5	Loss of Estate	-	15,000	Granted
6	Mental agony	10,000	-	Rejected
	TOTAL	7,86,200	12,78,000	Enhanced

8. The appeal is partly allowed and the Award of the Tribunal is modified, enhancing the compensation amount from **Rs.7,86,200/-** to **Rs.12,78,000/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.293 of 2011 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The said amount shall be apportioned amongst



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the claimants as per the Award of the Tribunal. On such deposit being made, the claimants are permitted to withdraw the award amount, along with accrued proportionate interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. The share of the minors shall be deposited in any one of the nationalized bank till they attain majority and the first petitioner shall be permitted to withdraw quarterly interest from the said amount. The claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimants. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

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Index: yes/No

Speaking Order: yes/no

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P.T.ASHA, J.,

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To

1. The Motor Accident Claims Tribunal
(II Small Causes Court),
Chennai.
2. The Section Officer,
V.R.Section, High court, Madras.

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and

M.P.No.1 of 2014

23.09.2022