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C.M.A.No.1017 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1017 of 2013

1.Karpagam

2.Nagaraj

3.Minor Muniyandi

4.Minor Sundarajan

.. Appellants

Versus

1.Sivakumar

2.The Divisional Manager

The United Insurance Company Limited

No.46, Katpadi Salai

Vellore

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the Motor Accidents Claims Tribunal, District Court, Tiruvannamalai made in M.C.O.P.No.265 of 2006 dated 27.07.2007.

For Appellant

: Mr.R.Rajarajan

For Respondents

: Notice is dispensed with for R1
vide Court Order dated
Mr.J.Michael Visuvasam for R2

JUDGMENT

The Civil Miscellaneous Appeal has been filed against the Judgment and Decree of the Motor Accidents Claims Tribunal, District Court, Tiruvannamalai



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made in M.C.O.P.No.265 of 2006 dated 27.07.2007.

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2.The manner of the accident, factum of the accident, rash and negligence on the part of the driver of the offending vehicle are not in dispute

3. On 01.02.2006, the deceased Annamalai was riding in first respondent Auto near 100 feet road, Anna Nagar 2nd Avenue, Chennai. The first respondent Auto dashed the car moving in front of the Auto and as a result, Annamalai died on spot. Hence, the claim petition.

4. The appellants/children are the claimants seeking to challenge the award passed by the Tribunal on the ground of quantum. The first respondent is the owner of the offending vehicle and the second respondent is the Insurance Company. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

5. During the trial before the Tribunal, the first appellant was examined as PW1. Ex.P1 to P7 were marked. Ex.P1 is the FIR Copy, Ex.P3 is the Post



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mortem report, Ex.P4 is the legal heirship certificate and Ex.P5 is the death certificate of the deceased. The Tribunal on consideration of both oral and documentary evidences came to conclusion that the accident has taken place due to the rash and negligent driving of the driver of the offending vehicle, accordingly, fixed the liability on both the offending vehicle and the second respondent and granted the compensation as tabulated below:

<i>Calculation</i>	<i>Rs.</i>
Loss of dependency	Rs.2,20,000/-
Loss of consortium	Rs.5,000/-
Funeral expenses	Rs.2,000/-
Total compensation is hereby fixed at	Rs.2,27,000/-

6.Heard Mr.R.Rajarajan, learned counsel for the appellants and Mr.J.Michael Visuvasam, learned counsel for the second respondent and perused the materials placed on record.

7. Considering the facts and also taking note of the plea raised by the learned counsel for the appellants, this Court is of the considered view that the income should be fixed as Rs.3000 and future prospects is fixed at 10% on the income of the deceased [(i.e., $3000+300(10\%)=3,300$] and the same is deducted by $1/3$ [(i.e., $3300-1/3(1100) = 2200$)] which should be calculated by following



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multiplier method [(i.e., Rs.2200x12x11=Rs.2,90,400)], similarly, consortium to the first petitioner is enhanced at Rs.20,000. It is seen from the Award that the loss of estate is not granted to the claim petitioners/claim appellants, hence, this Court is inclined to grant Rs.5000 as loss of estate and similarly, the claim petitioners 2 to 4/appellants 2 to 4 are granted with Rs.20,000/- each as loss of love and affections. However, the funeral expenses of Rs.2000 is hereby denied by this Court. Accordingly, the award amount is modified as below:

Calculation	Rs.
Loss of dependency	Rs.2,90,400/-
Loss of consortium to the first appellant	Rs.20,000/-
Loss of love and affections to the claim petitioners 2 to 4 (Rs.20,000x4=60,000/-)	Rs.60,000/-
Loss of estate	Rs.5,000/-
Total compensation is hereby fixed at	Rs.3,75,400/-

8. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed to the extent indicated above. Accordingly, the compensation awarded is enhanced from Rs.2,27,000/- to Rs.3,75,400/-. The rate of interest awarded by the Tribunal remains in tact. No Costs.



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(ii) the second respondent is directed to deposit the enhanced award amount before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited and recover the same from the owner of the offending vehicle/first respondent.

(iii) On such deposit being made, the claimants are permitted to withdraw their share in the award amount with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the appellants are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

23.06.2023

Internet : Yes/No
Speaking Order/Non-Speaking Order
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To

The Presiding Officer,
Motor Accidents Claims Tribunal,
District Court,
Tiruvannamalai



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A.A.NAKKIRAN, J.

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