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CMA.No.1215 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.1215 of 2013

1.Jayanthi

2.Minor Muthamizhselvi

3.Minor Vignesh

Respondents 2 and 3 rep by 1st appellant/mother

...Appellants

Vs

1.Nehru

2.The Oriental Insurance Co.,Ltd.,

Rep by its Branch Manager,

No.11-3-100/1, Vairah Road,

Kammam – 607 001.

3.Kalyanasundaram

4.The National Insurance Co.Ltd.,

Rep by its Branch Manager,

No.62, T.S.R.Big Street,

Kumbakonam Taluk and Munsif

..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in MCOP.No.823 of 2001 dated 19.07.2002 on the file of Motor Accident Claims Tribunal (Principal District Judge) Nagapattinam.



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For Appellants : Mrs.K.P.P.Kuilmozhi
For Respondents : Mr.K.Vinod for R2
Mr.J.Chandran for R2
Mr.D.Bhaskaran for R4
No such person - R1

J U D G M E N T

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 19.07.2002 passed by the Motor Accident Claims Tribunal (Principal District Judge), Nagapattinam in MCOP.No..823 of 2001

2. On 05.06.2001 at 10.00 a.m., while the deceased was travelling in a van bearing Regn.No.TN-04-Y-9439 on the Tiruvaipadi main road, a lorry bearing Regn.No.A.P.11/U-5137, came in a rash and negligent manner and dashed against the van, due to which, the deceased sustained fatal injuries and died in the accident and his daughter/2nd respondent sustained simple injuries. Claiming that the deceased was an Assistant in the Tamilnadu District Surveyor Office and earning about Rs.7393/- per month at the time of accident and the driver of the lorry is solely responsible for the accident,



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the appellants / claimants have filed a claim petition claiming a sum of Rs.20,00,000/- to the deceased and Rs.50,000/- to the injured claimant.

3. The appellants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.

4. The compensation awarded by the Tribunal under the impugned award in OP.No.823 of 2001 and OP.No.824 of 2001 are Rs.6,76,370/- and Rs.10,000/- respectively.

5. Before the Tribunal, the Appellants/claimants examined four witnesses as PW1 to PW4 and filed seven documents which were marked as Ex.P1 to Ex.P7. On the side of the second Respondent, neither witness was examined nor document filed.

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

7. The learned counsel appearing for the Appellants/Claimants



submitted that the order awarded by the Tribunal is unfair, unjust, arbitrary and against the principles of fair compensation. The Tribunal is not correct in using the multiplier scheme. He further submitted that the Tribunal having found that the deceased was a Government servant and could have considered the future increment and other promotional chances of the deceased and the consequential monetary benefits to the dependants. Hence the Tribunal has not considered the equitable compensation of claimants and fixed the claims improperly. He further submitted that the Supreme Court and this Court in several leading cases has held that the Tribunal should have liberal approach in deciding the quantum after having found that the driver of the lorry is responsible for the accident. The other reasons behind the award of the Tribunal is not correct and liable to be set aside. Hence, he prayed to enhance the compensation.

8. Per contra, the learned counsel appearing for the respondents 2 and 4 have submitted that the petition is devoid of merits. Moreover, the compensation claimed by the appellants is highly excessive and baseless. These respondents are not liable to pay any compensation to the claimants. He further submitted that the Tribunal after analysing the evidences on record, has rightly awarded the compensation to the appellants/claimants



and hence, the award passed by the Tribunal does not warrant any interference by this Court. Hence, he prays for dismissal of the appeal.

9. The Tribunal fixed the monthly income of the deceased at Rs.3696.50/- per month, deducting 2/3 of the income towards personal expenses of the deceased, adopting the multiplier of '15', calculated the loss of dependency on account of the death of the deceased and has arrived at a sum of Rs.6,65,370/-. The Tribunal has relied upon the deposition of PW1 and Ex.P1/FIR, Ex.P7/AR copy, Ex.P3/Post-Mortem certificate, the Tribunal has taken the age of the deceased as 40 years. On perusal of records, it is seen that the Tribunal has not considered the evidences properly and the documents marked. It is also seen that the deceased was the entire caretaker of the family.

10. Taking note of the above submissions of the learned counsel for the appellants / claimants, economic situation prevailing at the present time and also the facts and circumstances of the case, this Court fixed the notional income of the deceased at Rs.7393/-per month and added 50% of future prospectus which comes to Rs.7393+50% =11089/- and the same is



rounded off to Rs.11,100/- Since the age of the deceased was 40 years at the time of accident, there is need to change the multiplier as 15. Further, $\frac{2}{3}$ rd of the salary has to be deducted towards personal expenses for calculating loss of dependency. Thus the loss of dependency works out to Rs.13,32,000/- ($11,100 \times \frac{2}{3} \times 15 \times 12$). Accordingly, the amount awarded by the Tribunal towards 'loss of dependency' stands enhanced to Rs.13,32,000/-. Similarly, it would be appropriate to enhance the award under the head of loss of love and affection to the petitioners 2 and 3 to Rs.15000/- each which would come to Rs.30,000/-, and also Rs.10000/- towards funeral expenses. On perusal of records, it is seen that no amount is awarded under the head of loss of estate for which they are entitled to. Hence, this court is inclined to grant a sum of Rs.10000/- towards loss of estate. On perusal of records, it is also seen that the Tribunal has awarded a meagre sum of Rs.5000/- towards consortium and the same needs revisit. Hence, this court is inclined to grant a sum of Rs.15000/- under the head of consortium. However, the award amount of Rs.4000/- granted under the head of pain and suffering is unwarranted and hence this court is not inclined to grant any amount under the said head.



11. The details of the enhanced compensation are as under:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of dependency	665370/-	13,32,000/- (7393 + 50% x 2/3 x15x12)
Loss of love and affection to petitioners 2 & 3	----	30,000/- (15000 x 2)
Consortium to the 1 st appellant	5000	15000
Funeral Expenses	2,000/-	10,000/-
Loss of Estate	-----	10,000/-
Pain and sufferings	4000/-	-----
Total	6,76,370/-	13,97,000/-

12. Thus, the appellants / claimants are entitled to the modified compensation of Rs.13,97,000/-. It is made clear that for the enhanced amount of Rs.13,97,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal and interest rate of 9% before numbering the appeal.

13. The Civil Miscellaneous Appeal is partly allowed. No costs.

14. (i) The respondents 1 and 2, jointly and severally, are directed to



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deposit the modified compensation as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount as per the ratio apportioned by the Tribunal to the bank accounts of the first appellant along with accrued interest through RTGS within a period of two weeks thereafter.

(iii) Insofar as the minor Appellant Nos.2 & 3 are concerned, the Tribunal is directed to deposit their shares of award amount bearing fixed deposit in any one of the Nationalised Banks till they attain majority and the first Appellant/mother of the minors are permitted to withdraw the interest accrued once in six months for the welfare of the minors. No costs.

15. Since the compensation amount now awarded is Rs.13,97,000/- ,



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it is made clear that the claimants have to pay the appropriate Court fee in order to receive the awarded amount.

Index : Yes/No
Internet : Yes/No
gv

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To

1.The Motor Accident Claims Tribunal/
(Principal District Judge) Nagapattinam.

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



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A.A.NAKKIRAN.,J.
gv

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