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C.M.A.No.1656 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A. No. 1656 of 2022

- 1.Vennila
- 2.Minor Gobika
- 3.Minor Murugan
- 4.Arumugam

... Appellants

Versus

- 1.N.Gokulakannan
- 2.The Branch Manager,
Oriental Insurance Company Limited,
Branch Office, No.3-L,
Sidda Veerappa Chetty Street,
Dharmapuri.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking to set aside the judgment and decree dated 27.04.2019 passed in M.C.O.P. No.69 of 2017, by the Motor Accident Claims Tribunal, Sub Court, Uthangarai.

For Appellants	: Mr.S.P.Yuvaraj
For R1	: No Appearance
For R2	: Mr.M.J.Vijayaraghavan



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JUDGMENT

WEB COPY This appeal has been filed by the appellants/claimants challenging the compensation awarded by the Tribunal in M.C.O.P.No.69 of 2017, dated 27.04.2019.

2.The claim petition was filed stating that on 01.10.2016, at about 7.10 a.m., the deceased Tamilarasan was travelling as pillion rider in the Hero Honda Super Splendor Motor cycle bearing Registration No. TN 23 AQ 6392. The rider of the motor cycle was riding the vehicle slowly and cautiously by observing the rules. While so, when they were proceeding at Chinnappan Erikkarai, the Taras Lorry bearing Reg.No.TN AY 1766 was driven by its driver in a rash and negligent manner and hit against the motorcycle. Due the said accident, the deceased Tamilarasan fell down and the right front wheel of the lorry ran over the hip and both legs of the deceased. Thus, the appellants are entitled for compensation.

3.The 1st respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.



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4.The 2nd respondent/Insurance Company filed counter denying all the averments made in the claim petition and stated that the rider of the two wheeler did not possess valid driving license at the time of accident. Hence, the 2nd respondent is not liable to pay any compensation to the appellants. In any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellants/claimants examined two witnesses and marked Ex.P.1 to Ex.P.21 on their side. On behalf of the 2nd respondent/Insurance Company, no witness was examined and no document was marked.

6.The Tribunal after considering the oral and documentary evidence had held that the accident occurred due to rash and negligent driving by the driver of the lorry and being the insurer of the 1st respondent's lorry, directed the 2nd respondent/Insurance Company to pay a sum of Rs.14,74,000/- to the appellants/claimants.



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7. Aggrieved over the award passed by the Tribunal, the appellants/claimants filed the present appeal seeking for enhancement of compensation.

8. Learned counsel appearing for the appellants submitted that for an accident that took place in the year 2016, the Tribunal had taken meagre notional income of Rs.8,000/- per month though the appellants had established that the deceased was running a mutton shop. The Tribunal has not awarded compensation under the head loss of love and affection for the minor children and the father of the deceased. Further, the learned counsel submitted that the Tribunal taken 25% towards future prospects and applied multiplier 15, which are erroneous. The Tribunal ought to have granted 40% enhancement towards future prospects and ought to have applied 16 multiplier and hence, prayed for enhancement of compensation.

9. Per contra, learned counsel appearing for the 2nd respondent/Insurance Company submitted that appellants have not produced any proof for the income of the deceased. In such circumstances, the Tribunal rightly taken the monthly income of the



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deceased as Rs.8,000/-. Further, he relied upon the judgment of the Hon'ble Supreme Court in the case of ***Chandra @ Chanda @ Chandraram and another vs. Mukesh Kumar Yadav and others*** reported in ***2021 (2) TN MAC 498 (SC)***, wherein the Hon'ble Supreme Court taken Rs.8,000/- as notional income of the driver for the accident took place in the year 2016 and he submitted that there is no reason to interfere with the compensation awarded by the Tribunal and prayed for dismissal of the appeal.

10.The only question arises in the present appeal is whether the compensation awarded by the Tribunal is just and reasonable.

11.The learned counsel appearing for the 2nd respondent/Insurance Company relying upon the aforesaid judgment of the Hon'ble Supreme Court submitted that the notional income fixed by the Tribunal was just and reasonable. This Court is of the view that the notional income has to be fixed based on the facts and circumstance of each case and there cannot be any standard formula. In the present case, the appellants have established that the deceased was running a mutton shop and he was aged about 32 years at the time of accident. Considering the age, avocation,



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number of dependants and the year of accident, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased as Rs.12,000/- per month. The deceased was entitled for 40% future prospects and the correct multiplier applicable is 16. Since there are four dependents, 1/4th has to be deducted towards personal expenses. Therefore, the award of compensation under the head loss of income or dependency has to be as follows:

$$\text{Rs.12,000/-} + 4,800 \text{ (40\% of 12,000)} \times 12 \times 16 \times \frac{3}{4} = \text{Rs.24,19,200/-}$$

12.Further, it is seen that the appellants 2 to 4 have not been awarded compensation under the head loss of love and affection. They are entitled to Rs.40,000/- each towards loss of love and affection. The amount awarded by the Tribunal under other heads are just and reasonable. Thus, the compensation awarded by the Tribunal is modified 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
1.	Loss of dependency	14,04,000	24,19,200	Enhanced
2.	Loss of Consortium	40,000	40,000	Confirmed
3.	Loss of Estate	15,000	15,000	Confirmed
4.	Funeral Expenses	15,000	15,000	Confirmed
5.	Loss of love and affection for appellants 2 to 4	-	1,20,000	Granted
	Total	14,74,000	26,09,200	Enhanced by Rs.11,35,200/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,74,000/- is hereby enhanced to Rs.26,09,200/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is 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 four (4) weeks from the date of a receipt of copy of this Judgment. On such deposit the 4th appellant is entitled to withdraw



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a sum of Rs.2,00,000/- and the appellants 1 to 3 are entitled to share the balance sum of Rs.24,09,200/- equally. The appellants 1 and 4 are permitted to withdraw their respective shares along with interest and costs, less the amount if any, already withdrawn. The share of the minor appellants 2 and 3 is directed to be deposited in any one of the Nationalised Bank, till the minor attains majority. The mother of the appellants 1 and 2 is permitted to withdraw the accrued interest once in three months. The appellants are directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

07.08.2023

rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Subordinate Judge,
The Motor Vehicle Accident Tribunal,
Uthangarai.

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



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SUNDER MOHAN, J.

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