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C.M.A.No.9:



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No. 93 of 2022

1.Pappathi
2.Venkatachalam

...Appellants

Vs.

1.Ramachandran
2.National Insurance Company Limited,
2nd Floor, Maruthi Complex,
F-215, Omalur Main Road,
Salem-4

... Respondents

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to enhance the compensation awarded in the judgment and decree dated 07.10.2021 passed in MCOP.No.1435 of 2018 on the file of the Special District Judge, MCOP Tribunal at Salem.

For Appellants : Mr.Amar D Pandit

For Respondents

For R1 : No appearance

For R2 : Mrs.J.Chandran



JUDGMENT

The appeal is filed against the judgment and decree dated 07.10.2021 passed in MCOP.No.1435 of 2018 on the file of the Special District Judge, MCOP Tribunal at Salem. This appeal is filed seeking enhancement of compensation.

2. The claimants are the parents of the deceased 'Raja'. On 10.08.2018, while the deceased 'Raja' was standing near a temple in Seelanaickenpatti bye-pass road to cross the same, the bus belonging to the first respondent driven by its driver in a rash and negligent manner hit against the deceased causing him fatal injuries. According to the claimants', the deceased was aged 35 years at the time of accident and as an agriculturist and painter was earning Rs.25,000/- per month. The claimants therefore filed claim petition seeking a sum of Rs.30,00,000/- as compensation for the death of their son in the aforesaid motor accident.

3. The first respondent was set ex-parte and the claim petition was contested by the second respondent / insurance company. The second respondent / insurance company filed a detailed counter disputing the negligence, quantum and liability.



4. Before the Claims Tribunal, the claimants examined two witnesses and marked Ex.P1 to Ex.P5. On the side of the respondents, no witness was examined and two documents were filed. The Claims Tribunal, on assessment of entire evidence on record, found that the accident occurred only due to the rash and negligent driving of the first respondent's driver and that the claimants were entitled to Rs.16,01,000/- as compensation. Further, the Claims Tribunal mulcted liability on the second respondent / insurer of the first respondent. Not satisfied with the award passed by the Claims Tribunal, the claimants have filed the above appeal for enhancement of compensation.

5. The learned counsel for the appellants/claimants submitted that assesment of the notional income at Rs.12,000/- p.m., by the claims Tribunal was erroneous and unsustainable. The learned counsel further submitted that the award towards love & affection was against the judgment in ***Pranay Sethi's*** case

6. The learned counsel for the second respondent submitted that the award passed by the Tribunal was fair, just and reasonable. The counself further submitted that the Tribunal instead of deducting 50% of the income towards personal expenses, deducted only 1/3 towards personal expenses, which was unsustainable.



7. I have heard both the learned counsels and perused the materials placed on record.

8. It is the appellants case that the deceased, at the time of accident, was earning a substantial income of Rs.25,000/- per month as an agriculturist and painter. No documentary evidence in support of the claim of Rs.25,000/- per month as income is produced. In any event, as the accident occurred in 2018, considering the cost of escalation for 2018, I am of the view that the notional income of the deceased may be fixed at Rs.13,000/- per month. Therefore, the notional income of the deceased is assessed at Rs.13,000/-. 40% of the income is taken towards future prospects and 50% is deducted towards deceased's personal expenses. The multiplier 16 is adopted as the deceased was aged 35 years at the time of the accident.

9. It is submitted by the learned counsel for the appellants that the Tribunal awarded only Rs.20,000/- each towards loss of love and affection contrary to the dictum laid down in the case of *National Insurance Company Limited Vs. Pranay Sethi and others* reported in (2017) 16 SCC 680. The claimants shall therefore be entitled to Rs.40,000/- each towards loss of love and



affection. The Tribunal has awarded Rs.25,000/- towards funeral expenses. In my view, the claimants shall be entitled to Rs.15,000/- only towards funeral expenses and Rs.15,000/- towards loss of estate.

10. In view of the above, the award of the Tribunal is modified as follows:

<i>S.No</i>	<i>Various Heads</i>	<i>Awarded by the Tribunal</i>	<i>Awarded by this Court</i>
1.	Loss of income (13000 x 40/100 = 5200) (13000+5200 = 18200) 50% deducted towards personal expenses i.e. 9100 Therefore, 9100 x 12 x 16 = Rs.17,47,200/-	Rs.15,36,000/-	Rs.17,47,200/-
2.	Loss of love and affection (40,000 x 2)	Rs.40,000/-	Rs.80,000/-
3.	Funeral expenses	Rs.25,000/-	Rs.15,000/-
4.	Loss of estate	NIL	Rs.15,000/-
	Total	Rs.16,01,000/-	Rs.18,57,200/-

11. The amount awarded by the Tribunal is enhanced to Rs.18,57,200/-.

The claimants shall be entitled to enhanced compensation of Rs.18,57,200/- along with 7.5% interest. It is submitted by the learned counsel for the second respondent / insurance company that the entire amount awarded by the Tribunal was already deposited before the Tribunal. Therefore, the second respondent / insurance company is directed to deposit the balance amount of Rs.2,56,200/- with 7.5% interest from the date of the claim petition till the date of payment within a period



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of eight (8) weeks from the date of receipt of a copy of the order. The appellants/claimants shall thereafter be permitted to withdraw the same by filing appropriate application before the Claims Tribunal.

12. In the result, this civil miscellaneous appeal is partly allowed. There shall be no order as to costs in the present appeal.

05.06.2023

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Speaking Order: Yes/No

Index: Yes/No

Neutral Citation: Yes/No

To

1.The Special District Judge,
MCOP Tribunal,
Salem.

2.National Insurance Company Limited,
2nd Floor, Maruthi Complex,
F-215, Omalur Main Road,

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N.MALA, J

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