



C.M.A.No.2151 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.2151 of 2013

1. Mrs.G.Mallika

2. P.Ganesan

3. G.Dhanalakshmi

... Appellants

vs.

1. E.Subash

2. United Insurance Co. Ltd.
No.470 G.N.T. Road, Redhills,
Chennai – 52

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, pleaded to set aside the Judgment and Decree dated 22.11.2012 passed in M.C.O.P.No.141 of 2009 on the file of Motor Accident Claims Tribunal (III Court of Small Causes) Chennai and enhance the award amount.

For Appellants : Mr.M.Selvam for

Mr.K.Varadhakamaraj

For Respondents : Mr.M.J.Vijayaraaghavan for R2

R1-Sd-NA



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JUDGMENT

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This Civil Miscellaneous Appeal is filed by the legal heirs of the deceased Dhanasekar assailing the Judgment and decree passed by the Motor Accident Claims Tribunal (III Court of Small Causes) Chennai in M.C.O.P.No.141 of 2009 dated 22.11.2012 for enhancement of compensation.

2. The claim petition was filed under Section 166 of Motor Vehicles Act and Rule 3 of M.A.C.T. Rules claiming compensation of Rs.10 lakhs for the death of Mr.Dhanasekar in a road accident that occurred on 26.12.2008.

3. The Tribunal, after hearing both side arguments and upon considering the oral and documentary evidence put forth, has granted compensation of Rs.5,37,000/- to the claimants 1 and 2 with interest at 7.5% per annum from the date of filing of the petition i.e. 30.12.2008 till the date of deposit. Further, the Tribunal held that since the 3rd claimant is not the class 1 legal heir, she is not entitled for any share in the award amount.

4. The learned counsel appearing for the appellants/claimants would strenuously contend that the notional income fixed by the Tribunal at Rs.5,000/- per month is very less. Considering the decisions of the Hon'ble



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Supreme Court in the case of ***Syed Sadiq, etc. Vs. Divisional Manager,***

United India Insurance Co. Ltd., reported in **2014 (1) TN MAC 459 (SC),**

wherein, the Hon'ble Supreme Court has fixed the monthly income of a Vegetable Vendor aged 24 years as Rs.6,500/- for the accident occurred in the year 2008, the income of the deceased may be fixed as Rs.6,000/-. Further, the Tribunal has added only 30% as future prospects. As observed by the Hon'ble Supreme Court in the case of Pranay Sethi, 40% of the income to be added as future prospects. He would further contend that the Tribunal has adopted multiplicand of 13 is incorrect. He would also contend that for funeral expenses and for consortium, no amount was awarded by the Tribunal and hence, he prayed for enhancement.

5. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company would vehemently argue that in order to prove the employment of the deceased, employer was not examined. No income certificate was filed. For future prospects there must be some pleading which is not there in the claim petition. The multiplicand adopted by the Tribunal is correct and he would state that the compensation awarded by the Tribunal is in order which needs no interference.



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6. Heard the rival submissions of the learned counsels of both sides and perused the entire material records.

7. It is the evidence of P.W.2 who is the injured that on 26.12.2008 at about 2.00 hours, while the deceased Dhanasekar along with him, was riding the motorcycle bearing Reg. No.TN-05-K-1644 along 200 feet road, from South to North at Retteri Signal, Kolathur, Chennai, a Tipper lorry bearing Reg.No.TN-20-AT-9691, which came behind the motorcycle of the deceased in a rash and negligent manner, hit against the motorcycle, which is not in dispute. The driver of the erred vehicle namely tipper lorry, has been charge sheeted as per Ex.P.3.

8. As per Ex.P.4/Post-mortem certificate, the age of the deceased is 23 years and hence, the age of the deceased is fixed as 23 years. It has been stated that the deceased was working as an Electrician in Pantalooms Retail Industries Ltd., and was earning Rs.6,000/- per month and to substantiate, the same, his course completion certificate is marked as Ex.P.7 which shows that the deceased has completed ITI course in Electricals. The date of accident is 26.12.2008.



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9. As pointed out by the learned counsel for the appellants, the Hon'ble Supreme Court has fixed the income of a vegetable vendor aged 24 years as Rs.6,500/- per month for the accident that occurred in the year 2008. Therefore, the income of the deceased is fixed at **Rs.6,000/-** per month as claimed.

10. As regards future prospects, the Hon'ble Supreme Court has standardized the details of future prospects to be added with income in case of persons who are on a fixed salary in **National Insurance Co. Ltd. Vs. Pranay Sethi [reported in (2017) 2 TN MAC 609 (SC)]**, wherein the Apex Court held that for the age group of persons below 40 years, 40% of the income to be added as future prospects while computing the monthly income.

11. The multiplicand has to be selected as tabulated by the Hon'ble Supreme Court in the case of **Sarla Verma & Others Vs. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)**. The proper multiplicand to be applied for the age group of persons between 25 to 30 years is 17.

12 .The deceased happened to be a bachelor. Therefore, 50% deduction to be made for personal expenses from the monthly income.



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13 .Therefore, based on the aforementioned details the formula emerges as follows;

- i. The age of the deceased : 23 years
- ii. The monthly income is fixed: Rs.6,000/- p.m.
- iii. Future prospects :Rs.8,400/- (Rs.6,000/- +40%)
- iv. Multiplicand to be adopted: 17
- v. Personal expenses, to be deducted from the monthly income : 50%
- vi. Loss of dependency: Rs.8,56,800/- (Rs.8,400/-x12x17x50%)

14. For loss of estate, an amount of **Rs.15,000/-** is granted.

15. A sum of **Rs.5,000/-** is granted for funeral expenses in addition to the amount already awarded by the Tribunal.

16. The Hon'ble Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130** has held that the parents who lost their child are entitled to be awarded loss of consortium under the filial consortium. Therefore, the father and mother of the deceased are granted **Rs.40,000/-** each for loss of filial consortium.



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17. With regard to other heads, the amount awarded by the Tribunal is reasonable and needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Pecuniary Loss	Rs.5,07,000/-	Rs.8,56,800/-	Enhanced
2	Funeral Expenses	Rs.10,000/-	Rs. 15,000/-	Enhanced
3	Love and Affection (Rs.10,000/- each)	Rs.20,000/-	Rs. 20,000/-	Confirmed
4	Loss of Estate	--	Rs. 15,000/-	Awarded
5	For loss of Filial Consortium	--	Rs.80,000/-	Awarded
	Total	Rs.5,37,000/-	Rs.9,86,800/-	Enhanced

18. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.5,37,000/-** to **Rs.9,86,800/-** with interest at 7.5% per annum from the date of filing of the petition i.e. 30.12.2008 (except for the default period if any) till the date of deposit.

19. In the result,

(i) The Civil Miscellaneous Appeal is **partly allowed**. No costs.



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(ii) The compensation awarded by the Tribunal is enhanced from **Rs.5,37,000/-** to **Rs.9,86,800/-**.

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.9,86,800/-** (less the amount already deposited if any) together with interest at 7.5% per annum from the date of filing of the petition i.e. 30.12.2008 (except for the default period if any), till the date of deposit to the credit of M.C.O.P.No.141 of 2009 on the file of the Motor Accident Claims Tribunal (III Court of Small Causes) Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellants 1 & 2 are at liberty to withdraw the same on filing of cheque petition and they are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

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Index : Yes/No
Speaking / Non-speaking order
ksa-2



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To:

1. The Motor Accident Claims Tribunal
(III Court of Small Causes) Chennai

2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

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