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C.M.A.No.2880 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2880 of 2012

1. Gajalakshmi
2. Mythili
3. Suseela
4. Lalitha
5. Lakshmi

... Petitioners/Appellants

Vs.

1. S.Ravi ...1st Respondent / 1st Respondent
2. The National Insurance Company Limited,
No.751, Anna Salai,
Chennai – 2. ...2nd Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking to enhance the award dated 23.04.2012 made in M.A.C.T.O.P.No.4818/2002 on the file of the Motor Accident Claims Tribunal, VI Judge Court of Small Causes, Chennai.

For Appellants : M/s.A.Subadra for
M/s.S.Indira

For Respondents : *Ex-parte* [R1]
Mrs.R.Shreevidhya [R2]



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JUDGEMENT

The Civil Miscellaneous Appeal has been filed to enhance the award dated 23.04.2012 made in M.A.C.T.O.P.No.4818 of 2002 on the file of the Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

2. It is the case of the appellants that on 09.07.2002 at about 9:15 p.m. the deceased Kanagaraj was travelling in an auto bearing Registration No.TN 01 K 3487, at that time the driver of the auto has driven the vehicle in a rash and negligent manner and dashed against a goods auto, thereby the victim Kanagaraj sustained grievous injuries and was admitted in a hospital and during the course of treatment he died on 14.09.2002. Thereafter, the appellants/claimants have filed a claim petition claiming compensation of Rs.3,50,000/- under various heads.

3. Before the Tribunal, the claimants examined three witnesses viz., P.W.1 and P.W.2 and examined the Doctor as P.W.3 and marked 6 documents viz., Ex.P.1 to Ex.P.6. The respondents examined three witnesses viz., R.W.1 to R.W.3 and marked 5 documents viz., Ex.R1 to R5. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.30,000/- as



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compensation under various heads. Not satisfied with the same, the present appeal has been filed by the claimants seeking enhancement.

4. The learned counsel for the appellants submits that the said accident happened on 09.07.2002, due to which the the deceased sustained grievous injuries and was admitted in the Hospital as inpatient from 09.07.2002 to 02.08.2002. He further submitted that after his discharge he was on continuous treatment and during the course of the treatment the deceased died on 14.09.2002. The discharge summary is marked as exhibit P.3 and the death certificate is marked as exhibit P.4. Though the deceased died due to the injuries sustained by him at the time of accident, however, the Tribunal erroneously held that the AR copy of the deceased is a bogus one and awarded the said compensation which is very meagre. Accordingly, he prays to enhance the compensation awarded by the Tribunal.

5. The learned counsel appearing for the second respondent insurance company submits that admittedly the accident occurred on 09.07.2002, however it is the primary duty of the appellants to establish the fact that the death of the deceased was only due to the injuries sustained by him. He further submits that



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in order to obtain higher compensation the appellants have fabricated the Accident Register copy and the discharge summary. He further submitted that the deceased Kanagaraj did not die due to the injuries sustained in the alleged accident and there was no proximity between the death and the injuries sustained by him. However, in the absence of any proof to show that the said death was due to the injuries sustained by the deceased, the award passed by the Tribunal, need not be interfered with. Accordingly, he prayed to dismiss the appeal.

6. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent/insurance company and perused the materials placed on record.

7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellants/claimants is with regard to the quantum of compensation awarded. In this regard the claimants have examined P.W.3 doctor who treated the deceased deposed that though continuous treatment was provided to him after his discharge from hospital, in the course of treatment he



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died on 14.09.2002 at home due to complications which arose out of injuries

he sustained in the said accident. Though the doctor P.W.3 opined that the death of the deceased was due to the said accident, the Tribunal awarded the compensation to the tune of Rs.30,000/- which is on the lower side. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1) TANMAC 459**, fixing a notional income of Rs.3,000/- and adding future prospects at 25%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.3750/-. Deducting 1/4 towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.2,813/- per month and the deceased being aged between 49 to 50 years, as evidenced from the records, adopting the multiplier of 13 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in **(2009) 6 SCC 121**, the loss of income to the family is arrived at Rs.2813/- * 12 * 13 = Rs.4,38,828/-, which is worked out as follows :-



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<i>Loss of Income</i>	<i>Amount (in Rs.)</i>
Notional income (Per month)	3,000
Add: Future Prospects (Rs.3,000 x 25%) (Per month)	750
	3,750
Less: Personal expenses (1/4) (Rs.3,750/- x 1/4) (Per month)	937 (rounded off)
	2813
Notional income (per annum) (Rs.2813/- x 12)	33,756
Multiplier	13
Total	4,38,828

8. This Court finds that the compensation awarded under the heads of extra nourishment, transportation and damage to clothes are just and reasonable and does not require any interference. Further, the appellants are entitled to a sum of Rs.5,000/- each under the head “loss of love and affection”. Therefore a sum of Rs.25,000/- is awarded under the head “loss of love and affection”. Since no amount has been granted towards "pain and suffering" and “funeral expenses”, this Court awards a sum of Rs.10,000/- and Rs.5,000/- respectively under these heads.

9. In view of the above, the compensation awarded by the Tribunal is modified as under :-



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<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of income	8,000/-	4,38,828/- (enhanced)
2	Pain and Suffering	-	10,000/-
3	Love and affection	-	25,000/-
4	Extra nourishment	10,000/-	10,000/-
5	Transportation	11,000/-	11,000/-
6	Damage to Clothes	1,000/-	1,000/-
7	Funeral expenses	-	5,000/-
	Total	30,000/-	5,00,828/-

10. Accordingly, the appeal is partly allowed and the impugned Award of the Tribunal is modified by reducing the compensation amount from **Rs.30,000/-** to **Rs.5,00,828/-**. The second respondent/insurance company is directed to deposit the said amount to the credit of M.C.O.P.No.4818 of 2002 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellants/claimants through RTGS as per the apportionment of the Tribunal



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within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal.

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Speaking Order : Yes/No

Index : Yes/No

NCC : Yes/No

To

1. Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai
2. The Section Officer, V.R. Section, High Court, Madras.

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