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CMA No.3445 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.02.2023

PRONOUNCED ON : 28.03.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.3445 of 2021

1. Baby.Keerthana
2. G.Uma .. Appellants/petitioners
[1st appellant, rep. By guardian and
next friend-grandmother
G.Uma, 2nd appellant]

Vs.

1. Sajjai Ali Khan Deshmukh
2. The Manager,
New India Insurance Company Limited,
No.45, Moore Street,
Parrys, Chennai – 600 001. .. Respondents

[1st respondent, set exparte in trial Court.]

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to enhance the award dated 23.07.2019 passed in MCOP No.3831 of 2015 on the file of the Motor Accident Claims Tribunal [Chief Judge, Court of Small Causes], Chennai.

For Appellants : Mr.S.Vijay Anand
For Respondents : Mr.J.Chandran (for R2)



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JUDGMENT

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This Civil Miscellaneous Appeal, was originally dismissed for default on 05.01.2022 and restored to file by an order made in CMP No.4136 of 2022 dated 04.07.2022.

2. Claim petitioners are the appellants herein seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai, vide judgment and decree dated 23.07.2019 in MCOP No.3831 of 2015, for the death of one N.G.Rajesh, who died in the road transport accident on 06.09.2014.

3. Mr.J.Chandran, learned counsel appears for the 2nd respondent- Insurance Company. Notice to 1st respondent is dispensed with, since he remained ex-parte before the claims tribunal.

4. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the claims tribunal.



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5. The factum of the accident, the manner of the accident and the negligence on the part of the driver of the offending vehicle, are not disputed and hence, the findings of the tribunal are confirmed.

6. On the point of quantum, learned counsel for the appellant/claim petitioners could contend that in view of the evidence of PW3-Ravichandran, Panchayat Board President, who had issued Ex.P13-Pay Certificate of the deceased, he was earning a sum of Rs.21,000/- even in the year 2014 and hence, notional income fixed by the tribunal at Rs.10,000/- is too low and also contended that future prospects is not awarded. Hence, he seeks for enhancement.

7. Heard the learned counsel for the 2nd respondent-Insurance Company.

8. (a) The date of the accident is 06.09.2014. Ex.P13 is the salary certificate, issued by the PW3, Panchayat Board President indicating that the deceased N.G.Rajesh, was working as a Poojari in the temple and Rs.21,000/- is paid in the year 2014. Taking into consideration the nature



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and place of avocation carried on by the deceased at the time of the accident, Rs.14,000/- would be just and reasonable. Accordingly, notional income of the deceased is fixed at Rs.14,000/- per month.

(b) As per Ex.P2-Postmortem Certificate, the age of the deceased is 34 years and the right multiplier as per *Sarla Varma Vs. Delhi Transport Corporation Ltd.*, reported in **TNMAC 2009 (2) SC**, is '16'. Further, there are two dependants and hence, 1/3rd of the income is to be deducted towards personal and living expenses of the deceased. Future prospects is not considered by the tribunal. Therefore, following the decision of the Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi*, reported in **2017 (16) SCC 680**, 40% of the income of the deceased, is added towards his future prospects. Thus, the pecuniary loss accessed by the claims tribunal, is reassessed as under.

Notional Income	: Rs.14,000/-
Future Prospects	
at 40%	: <u>Rs. 5,600/-</u>
Total Income	: Rs.19,600/-

Pecuniary loss	=	Rs.19,600/- x 12 x 16 x 2/3
	=	Rs.25,08,800/-



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Accordingly, a sum of Rs.25,08,800/- is awarded under the head 'pecuniary loss', as against Rs.12,80,000/- awarded by the tribunal.

(c) Further, sum of Rs.20,000/- each awarded under the head 'loss of love and affection' to the minor daughter and the mother of the deceased is very less. Perusal of the award and record shows that the wife of the deceased has pre-deceased him. The minor daughter aged 7 years and the mother, who is aged 54 years, are his dependants. There is also no award under the head, 'transportation' and 'loss of estate'. Therefore, this Court is of the view that a sum of Rs.40,000/- each claimants, under the head 'loss of love and affection' and Rs.15,000/- each under the heads, 'loss of estate' and 'Transportation', would be just and reasonable and hence, the same is awarded.

9. In view of the above discussion, the award of the tribunal is enhanced from Rs.13,35,000/- to Rs.26,33,800/- as detailed hereunder.

Pecuniary loss	= Rs. 25,08,800/-
Loss of love and affection to minor daughter and mother @ Rs.40,000/- each	= Rs. 80,000/-
Funeral Expenses	= Rs. 15,000/-
Loss of Estate	= Rs. 15,000/-



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Transportation	= Rs. 15,000/-
Amount now awarded	= Rs. 26,33,800/-
Amount awarded by the Tribunal	= Rs.13,35,000/-
Enhanced Amount	= Rs.12,98,800/-

10. In the result, it is ordered as follows:

- (i) The judgment and decree dated 23.07.2019, made in MCOP No.3831 of 2015 on the file of the Motor Accident Claims Tribunal [Chief Judge, Court of Small Causes], Chennai, stands modified to the limited extent that the compensation of Rs.13,35,000/- awarded by the claims tribunal is enhanced to Rs.26,33,800/- and the interest awarded by the claims tribunal, remains unaltered.
- (ii) Out of the total compensation amount of Rs.26,33,800/- the 1st claim petitioner/minor daughter is entitled to Rs.20,00,000/- and the 2nd claim petitioner/mother of the deceased is entitled for Rs.6,33,800/-.
- (iii) Additional Court fee, if any, to be paid by the claim petitioners within a period of four weeks and decree to be drafted after the payment of Court fee.
- (iv) The 2nd respondent-Insurance Company is directed to deposit the enhanced compensation amount of Rs.26,33,800/- with proportionate interest and costs to the credit of MCOP No.3831 of 2015 on the file of the Motor Accident Claims Tribunal



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[Chief Judge, Court of Small Causes], Chennai, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any.

(v) On such deposit, the 2nd appellant/2nd claim petitioner, is permitted to withdraw her share in the award amount, as apportioned above, less the amount already withdrawn, if any, on making necessary application.

(vi) The share of the minor claim petitioner/1st appellant, is ordered to be deposited in a Nationalised Bank, till she attains majority and the 2nd appellant, being the legal guardian is entitled to receive the accrued interest once in three months from the bank directly for the benefit of minor.

11. With the above directions, the Civil Miscellaneous Appeal stands partly allowed. No Costs.

28.03.2023

Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No.
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RMT.TEEKAA RAMAN,J.,

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To

The Chief Judge, Court of Small Causes,
Motor Accident Claims Tribunal, Chennai.

Pre-delivery Judgment in
CMA No.3445 of 2021

28.03.2023