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C.M.A. No. 2389 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2389 of 2021

1. Latha
2. Minor Vijayananth
3. Minor Jeevananth
4. Minor Geetha
5. Madheswari
6. Muthusamy ... Appellants / Petitioners
Vs.

1. Singaravelu
2. The United India Insurance Co. Ltd.,
Divisional Office 2, 1st Floor,
Permanur Main Road,
Peramanur, Salem - 636 007. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 23.12.2020 made in M.C.O.P. No. 541 of 2017 on the file of the Additional District and Sessions Judge No.II, Motor Accident Claims Tribunal, Salem.

For Appellants : Mr. T.S. Arthanareeswaran
For R1 : No Appearance
For R2 : Mr. D. Bhaskaran



JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No. 541 of 2017, dated 23.12.2020 on the file of the Additional District and Sessions Judge No.II, Motor Accident Claims Tribunal, Salem, wherein the Tribunal has awarded compensation for a sum of Rs.18,45,248/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. On 10.06.2016 at about 11:30 PM, the deceased namely Dhanasekaran was riding a Hero Passion Pro two wheeler bearing Registration No.TN-34-V-0504 on the Salem to Kovai By-pass road, and near Muniappan Kovil, Sankari, he dashed against the back side of the Tempo, which was parked negligently in the road. Due to the accident, the claimant sustained multiple injuries all over his body and he was immediately taken to Government Hospital, Sankari for first aid and then



admitted to Sudha Hospital, Erode, where he succumbed to injuries on 11.06.2016 at about 08:03AM. A criminal case was also registered against the driver of the TATA Motors- 407 Tempo bearing Registration No.TN-28-W-3393 in Cr.No.283/2016 U/s.279, 304(A) of I.P.C. on the file of Sankari Police Station, Salem. Due to the loss of the deceased Dhanasekaran, his legal heirs have come forward with a claim petition seeking compensation for a sum of Rs.25,00,000/- along with interest under section 166 of the Motor Vehicles Act, 1988.

4. The first respondent is the owner of the TATA Motors- 407 Tempo bearing Registration No.TN-28-W-3393 has not contested the claim and remained ex-parte. The second respondent - insurer of the Tempo vehicle has filed a counter, denied the manner in which the accident has taken place. Further, contended that the accident was taken place only due to the rash and negligence on the part of the deceased, who hit against the stationary Tempo, which was parked in the extreme left side of the road by abiding the traffic rules. The insurance company also disputed the age, occupation, income of the deceased and contended that the compensation claimed under various heads are on the higher side, hence prays to dismiss



the claim petition.

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5. Based on the evidence placed on record, the Tribunal in point no.1, has held that the accident was taken place only due to the negligent parking by the driver of the first respondent's TATA Motors- 407 Tempo bearing Registration No.TN-28-W-3393. In point no.2, the Tribunal has fixed the liability on the part of the second respondent - insurance company to indemnify the first respondent and to pay the compensation to the claimants. In point no.3, the Tribunal has quantified and granted compensation for a sum of Rs.18,45,248/- along with the interest @ 7.5% per annum from the date of filing of petition till the date of realization.

6. Aggrieved over the award of the Tribunal, the claimants have come forward with this appeal seeking enhancement of compensation on the ground that the Tribunal has not properly appreciated the evidence placed on record for fixing the income of the deceased.

7. The learned counsel appearing for the claimants have submitted that the Tribunal has not properly appreciated the evidence that the deceased



was a driver by profession and was earning Rs.25,000/- per month and fixed the monthly notional income of the deceased as Rs.13,000/- and the Tribunal has also not granted future prospectus for the compensation under the head loss of income and further contended that the compensation awarded under other heads are on the lower side, hence prays to enhance the same.

8. Per contra, the learned counsel appearing for the respondent - insurance company has submitted that the Tribunal has properly appreciated the evidence placed on record and rightly fixed the notional income for the deceased as Rs.13,000/- and also the compensation awarded by the Tribunal under various heads are just, hence prays to confirm the same.

9. I have considered the submissions made on both sides and perused the materials placed on record.

10. Claimants claim that the deceased was a lorry driver by profession and was earning Rs.25,000/- per month but no documents or any witness were examined to prove either his avocation or his income. The Tribunal has fixed monthly notional income of Rs.13,000/- for the deceased.



According to the claimants, the accident was taken place in the year 2016, but the notional income fixed by the Tribunal is on the lower side.

11. The Ex.P.16 - appointment Order and Ex.P.19 - salary certificate was marked before the Tribunal but the authenticity of the document was not proved before the Tribunal. The Division Bench judgment of this Court in *Andal and others vs. Avinav Kannan and others* reported in **[2019 (1) TN MAC 54 (DB)]**, has laid a dictum for fixing the monthly notional income of persons, who are self employed, manual labourer etc., by taking into consideration of the Cost Inflation Index referred by the Central Government. Accordingly, the monthly notional income of the deceased comes around Rs.13,000/-. Hence, this Court is of the view that the fixing of Rs.13,000/- per month as notional income of the deceased is proper and this Court is inclined to confirm the same.

12. The Tribunal has not awarded future prospectus, as per the dictum laid down in *National Insurance Co. Ltd., vs. Pranay Sethi and other* **[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]**. This Court is inclined to grant 40% as future prospectus and as per *Sarla Verma and others Vs. Delhi*



Transport Corporation and others reported in ***[2009 ACJ 1298 SC : 2009 (6)***

SCC 121], the multiplier is fixed as '15' by considering the age of the deceased, who is 37 years at the time of occurrence based on the Ex.P.9 - driving licence. Considering the number of dependents, after deducting one-fourth (1/4) of his monthly income towards his personal and living expenses, the compensation under loss of dependency with future prospectus is modified as follows:

Annual income (Rs.13,000/- x 12)	= Rs.1,56,000/-
Future prospects @ 40%	= Rs.62,400/-
Yearly income of the deceased	= Rs.2,18,400/-
Yearly contribution to his family (after deduction of 1/4)	= Rs.1,63,800/-
Applicable Multiplier	= 15
Total compensation (Rs.1,63,800/- x 15)	= Rs.24,57,000/-

13. The Tribunal has awarded Rs.40,000/- towards loss of spouse consortium but as per the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs Nanu Ram*** reported in ***2018 ACJ 2018***, all the claimants are entitled for consortium. In this case, the claimants are the wife, children and parents of the deceased, hence, this Court is inclined to grant Rs.40,000/- each as the compensation under spouse consortium, parental consortium and filial consortium to the wife, children and parents of the deceased Dhanasekaran, respectively. Whereas the other heads are concerned, the compensation awarded by the Tribunal are just and the same



are hereby confirmed.

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14. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	17,55,000/-	24,57,000/-	Enhanced
2.	loss of consortium	40,000/-	2,40,000/-	Enhanced
3.	Medical expenses	20,248/-	20,248/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total Compensation	18,45,248/-	27,47,248/-	Enhanced

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,45,248/- is hereby enhanced to **Rs.27,47,248/- [Rupees Twenty Seven Lakhs Forty Seven Thousand Two Hundred and Forty Eight only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a



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copy of this judgment to the credit of M.C.O.P.No.541 of 2017 on the file of the II Additional District and Sessions Judge, Motor Accidents Claims Tribunal, Salem. On such deposit, the appellants/ claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants, as far as minor claimants are concerned, the award amount of the minor claimants shall be deposited in the name of the claimants in any one of the Nationalized Bank in Fixed Deposit under the guardianship of their mother till they attain the majority. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

21.12.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

K. RAJASEKAR, J.

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To:

1. The II Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

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