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C.M.A.No.3051 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3051 of 2017

and

CMP No.11046 of 2018

1. Menaka

2. Minor Suhanth

3. Kunjammal

... Appellants

..Vs..

1. Vanitha

2. Reliance General Insurance Company Limited

3rd Floor, Sakthi Super Market Building

No.408, Perundurai Road

Erode-638 011.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award made in MCOP No.1435 of 2013, dated 05.08.2017 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Namakkal.

For Appellants

: Mr. C.Parneedharan

For Mr.T.S.Arthanareeswaran

For Respondents

: Mr.S.Arunkumar for R2



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JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation made under the impugned award dated 05.08.2017 passed by the Motor Accident Claims Tribunal/ Principal District Judge, Namakkal in M.C.O.P No.1435 of 2013.

2. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of dependency (6000 (-) 1/3rd = 4,000 x 12 x 17	8,16,000/-
Loss of Estate	2,000/-
Funeral Expenses	5,000/-
Loss of love and affection	2,000/-
Loss of consortium	5,000/-
Total	8,30,000/-

3. The learned counsel appearing for the appellants mainly contended that the entire quantum of compensation awarded by the Tribunal is very low. The Tribunal has failed to award compensation under the head of future prospectus without following various judgments laid down by the



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Hon'ble Apex Court. The monthly income fixed by the Tribunal is very low.

Further, the compensation awarded under the heads of love and affection, consortium, funeral expenses and loss of estate is very meagre. Hence, he prays to enhance the award.

4. The learned counsel for the second respondent insurance company contended that the appellants have not let in any material evidence to prove that the deceased was earning a sum of Rs.30,000/- as monthly income at the time of accident. In the absence of material evidence, the Tribunal fixed a sum of Rs.6,000/- as monthly income, which is not meagre. The Tribunal has rightly awarded a reasonable compensation and therefore, he prays for dismissal of the appeal.

5. The accident occurred on 22.07.2013 at 4.45 p.m, at Thiruchengode-Vellore Road, near Meenkinaru bus stop. The Tiruchengode Rural Police Station registered a case in Crime No.324 of 2013 under Sections 279 and 304(A) IPC. While the deceased Jayakumar was proceeding in his two wheeler viz., TVS 50 bearing Registration



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No.TN-34 0538 near Meenkinaru bus stop, the driver of the Trailer Lorry bearing Registration No.TN 30 R-4500 came in a opposite direction rashly and negligently and hit against the deceased. Due to the accident, he sustained fatal injuries all over the body and died in the hospital. Thereafter, the claim petition was filed by the wife, child and mother of the of the deceased, the claimants/appellants herein. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the respective parties.

6. As seen from the impugned award, the Tribunal has not awarded any compensation towards loss of future prospects which the Appellants/claimants are legally entitled to as per the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & others*** reported in ***2017 (2) TN MAC 609 (SC)***. Accordingly, this Court grants 40% towards loss of future prospects to the Appellants.



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7. From the materials available on record, it is seen that the appellants have contended that deceased Jayakumar was a Gas Cylinder Delivery man and was earning a sum of Rs.30,000/- per month at the time of accident. In this regard, PW3-Palanisamy deposed that the deceased was earning Rs.16,000/- per month as Gas Delivery Man. But, no proof of income has been filed by the appellants/claimants. In the absence of material evidence, the Tribunal fixed a sum of Rs.6,000/- as monthly income of the deceased, who died in the accident that had occurred in the year 2013, which is meager. However, considering the age and avocation of the deceased, this Court is of the considered view that it would be appropriate to fix a sum of Rs.8,000/- as his notional income. Thus, the loss of dependency is modified as follows:

8,000/- + 40% future prospects=11,200/-

less 1/3rd deduction =7467/- x 12 x 17 = Rs.15,23,268/-

8. The compensation granted under the conventional heads are not in consonance with the principles laid down by the principal Apex Court of India in the case of Pranay Sethi. In view of the fact that the Tribunal has



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erroneously awarded the compensation under the heads of loss of estate, funeral expenses, consortium and love and affection, the award of compensation is to be modified. Thus, this Court is inclined to modify the compensation granted by the Tribunal as detailed hereunder:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of dependency	8,16,000/- (6000/- (-)1/3 = 4000 x 12 x 17)	15,23,268/- 8,000 + 40% (-) 1/3=7467 x12 x 17
Loss of Estate	2,000/-	15,000/-
Funeral Expenses	5,000/-	15,000/-
Loss of love and affection to minor child and mother	2,000/-	80,000/-
Loss of consortium to wife	5,000/-	40,000/-
Total	8,30,000/-	16,73,268/- rounded off to 16,73,270/-

Accordingly, the claimants/appellants are entitled to a compensation of Rs.16,73,270/- (Rupees sixteen lakhs seventy three thousand and two hundred and seventy only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization and out of the entire compensation amount, the 1st appellant shall receive a sum of



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Rs.7,73,270/-, the 2nd appellant shall receive a sum of Rs.6,00,000/- and the 3rd appellant shall receive a sum of Rs.3,00,000/-.

9. In the result,

(i) This appeal is allowed and the compensation awarded by the Tribunal is enhanced from 8,30,000/- to Rs.16,73,270/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation.

(ii) The second respondent Insurance Company is directed to deposit the modified award amount i.e, Rs.16,73,270 /- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.1435 of 2013 within a period of six weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount as per the ratio apportioned by this court to the bank account of the Appellants 1 and 3 along with accrued interest through RTGS within a period of two weeks thereafter.

(iv) Insofar as the minor Appellant no.2 is concerned, the Tribunal is directed to deposit the share of his award amount bearing fixed deposit in



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any one of the Nationalised Bank till he attain majority and the first Appellant/mother of the minor is permitted to withdraw the interest accrued once in six months for the welfare of the minor.

(v) The appellants/claimants are directed to pay the necessary court fee, if any for the enhanced compensation and the Registry is directed to draft the decree, after receipt of necessary court fee. No costs. Consequently, connected Miscellaneous Petition is closed.

17.04.2023

Index:Yes/No

Speaking/Non-speaking Order

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To

1. The Principal District Judge,
(Motor Accidents Claims Tribunal),
Namakkal.
- 2.The Section Officer
V.R.Section, High Court of Madras.



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A.A.NAKKIRAN, J.

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