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C.M.A.No.1460 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.06.2023

Coram:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No. 1460 of 2018

Valli (Since died)
Pachaiappan

...Appellant

Vs.

1. Jessy George
2. The Oriental Insurance Co. Ltd.,
115/116, Prakasam, Chennai – 600 118.

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree passed in M.C.O.P.No.6286 of 2013 dated 22.02.2017 by the learned Special Subordinate Judge No.II to deal with MCOP Cases, Motor Accident Claims Tribunal/ Small Causes Court, Chennai.

For Appellant : Mrs.A.Subadra for Mrs.M.Malar

For Respondents : Mr.K.Vinod for R2

R1 – Ex parte



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JUDGMENT

WEB COPY This civil miscellaneous appeal is filed by the claimant challenging the Judgment and Decree passed in M.C.O.P.No.6286 of 2013 dated 22.02.2017 by the learned Special Subordinate Judge No.II to deal with MCOP Cases, Motor Accident Claims Tribunal/ Small Causes Court, Chennai.

2 The appellant/claimant filed claim petition before the learned Special Subordinate Judge No.II to deal with MCOP Cases, Motor Accident Claims Tribunal/ Small Causes Court, Chennai, seeking a sum of Rs.60.00 lakhs as compensation for the death of his wife.

3 The claim petition was not contested by the first respondent owner of the offending vehicle and he remained ex-parte before the Tribunal. The second respondent/Insurance company filed detailed counter denying all the allegations apart from the disputing the negligence and liability.

4 Before the claims Tribunal, appellant/claimant was examined as P.W.1, the Doctor was examined as P.W.2 and Exs.P1 to P17 were marked on behalf of the appellant/claimant. On the side of the respondents no oral and documentary evidence was adduced.



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The claims Tribunal, on an assessment of the entire evidence on record, awarded a sum of Rs.13,21,700/- as compensation along with 7.5% interest. Not being satisfied with the compensation ordered by the claims Tribunal, the claimant has filed the above appeal.

6 The learned counsel for the appellant/claimant would submit that at the time of accident the deceased was working as construction labour and was earning Rs.12000/- p.m. But, the Tribunal fixed the income as Rs.6,500/- p.m., which is very meager. Therefore award of Tribunal towards the Loss of Pecuniary Benefits needs to be enhanced.

7 Further the learned counsel contended that the deceased was only aged about 20 years at the time of death and she took continuous treatment till her death. The Tribunal without even considering the nature of injuries sustained, period of hospitalisation awarded a meager amount under the other heads and the same needs to be enhanced.



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8 The learned counsel for the second respondent, on the other hand

submitted that the Award of the Tribunal under the heads of Loss of Consortium, Loss of Estate and Funeral Expenses are all on higher side and the same have to be reduced.

9 I have heard both the learned counsels and perused the materials available on record.

10 It is seen that at the time of accident, the deceased was aged about only 19 years and took treatment till her death. The appellant/claimant is her husband and he is the only dependent. It is stated that the deceased at the time of accident was working as construction labour and was earning Rs.12,000/- .p.m.

11 Considering age of the deceased and cost of living prevailed on the date of accident, I am inclined to fix the notional income of the deceased at Rs.9,000/- p.m.

Monthly income of the deceased - Rs.9,000/-

Future Prospects 40% - (+) Rs.3,600/-

Rs.12600/-



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Loss of Pecuniary benefits - Rs.12,600 x 12 x 18 x ½ = Rs.13,60,800/-

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12 In fine, considering the nature of the case, the Award of the Tribunal under various heads is modified as follows:.

<i>Sl. No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Loss of Pecuniary Benefits	10,53,000.00	13,60,800.00
2.	Loss of Consortium	1,00,000.00	40,000.00
3.	Loss of Estate	1,00,000.00	15,000.00
4.	Medical Expenses	1,700.00	1,700.00
5.	Transport to hospital	5,000.00	5,000.00
6.	Damage to clothing and articles	2,000.00	2,000.00
7.	Attender Charges	10,000	10,000.00
8.	Funeral expenses	50,000.00	15,000.00
TOTAL COMPENSATION		13,21,700.00	14,49,500.00

13 The appellant/claimant is therefore entitled to enhanced compensation of Rs.14,49,500/- along with 7.5% interest. The second respondent is directed to deposit the enhanced compensation along with 7.5% interest less the amount, if any, already deposited within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant shall be entitled to withdraw the same by making proper application before the Tribunal. Further the appellant is directed to pay the



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necessary court fee for the enhanced Award as ordered by this Court on

14.11.2017. Accordingly the appeal is partly allowed. There shall be no order as

to costs.

23.06.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

To

1. The Special Subordinate Judge No.II to deal with MCOP Cases, Motor Accident Claims Tribunal/ Small Causes Court, Chennai.
2. The Section Officer, V.R.Section, High Court, Madras.



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A.A.NAKKIRAN, J.

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