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CMA.No.1413 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.M.A.No.1413 of 2021

- 1.Santhiya
2. Minor Sujitha
3. Minor Kanishkan
- (Minors appellants represented by their next friend
and mother Santhiya/first appellant)
4. Sellammal

... Appellants

- Vs -

1. Selvi
2. HDFC ERGO General Insurance Company Limited,
356/1, Empire Arcot, Omalur Main Road,
Opposite New bus Stand, Salem – 4.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, praying to enhance the award dated 22.01.2021 made in M.C.O.P.No.169 of 2017 on the file of the Motor Accident Claims Tribunal (Sub Judge), Rasipuram.

For Appellants	: Mr.R.Nalliyappan
For R1	: M/s. W.Camyles Gandhi
For R2	: Mr.S.Arun Kumar



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JUDGMENT

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This instant appeal has been filed by the wife, two minor children and mother of the deceased Prabhu against the award passed in M.C.O.P.No.169 of 2017 by the Motor Accidents Claims Tribunal, (Sub Judge), Rasipuram, on 22.01.2021, awarding a sum of Rs.13,09,600/- as compensation.

2. For the sake of convenience, the parties are referred to as per their ranks mentioned in the petition.

3. According to the petitioners, on 24.02.2016 at about 06.45p.m, the deceased Prabhu, while riding his Two Wheeler in Namagiripettai to Belukkurchi main Road, the driver of the Tractor bearing registration No. TN 28 AS 4846 owned by the first respondent, drove the same in a rash and negligent manner and hit against the motorcycle rode by the deceased and caused the accident. In the accident, the said Prabhu sustained fatal injuries and died on the spot. The accident occurred only due to rash and negligent driving of the driver of the Tractor owned by the first respondent. At the time of accident, Prabhu was aged about 33 years, and earning Rs.20,000/- per month as a Loadman.



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4. The first respondent remained exparte before the Tribunal.

5. The second respondent filed a counter statement stating that there was no negligence on the part of the driver of the vehicle bearing Registration No.TN 28 AS 4846. It was also pleaded that the driver of the insured vehicle did not possess valid driving license. Further, the second respondent/Insurance Company also disputes the age, income and dependency of the claimants.

6. Before the Tribunal, the first petitioner examined herself as PW1 and one Mr.Shanmugavel was examined as PW2 and marked 15 documents as Exs.P1 to Exs.P15. On the side of the second respondent, Office Assistant of RTO, one Sikatharali was examined as RW1 and marked Ex.X1, they also examined their Legal Manager one Mr.Sivakumar as RW2 and marked Exs.R1 to R3.

7. The Tribunal, based on the materials available on record and the evidence, has observed that the accident had occurred due to the negligent driving of the driver of the Tractor and hence fixed the liability on the



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Insurance Company and awarded a total compensation of Rs.13,09,600/- with interest at 7.5% per annum from the date of petition. Further on holding that there was a violation of policy condition, pay and recovery was ordered. Feeling aggrieved with the quantum so awarded, the petitioners/claimants have preferred this appeal seeking enhancement of the same.

8. The learned counsel for the appellants would submit that the Tribunal has erred in awarding a meagre sum of Rs.13,09,600/- as against the claim of Rs.30,00,000/- made by the appellants / claimants. The learned counsel further submitted that when the deceased was earning Rs.20,000/- per month as a Loadman, the Tribunal has erred in taking his income only at Rs.6,000/- per month. It is also submitted that the amounts awarded towards other heads are meagre and hence, the compensation awarded by the Tribunal needs interference at the hands of this Court by way of enhancement.

9. Per contra, the learned counsel for the second respondent/insurance company submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference by this Court.



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10. I have given my anxious consideration to either side submission.

11. The Tribunal arrived at a conclusion that there was a negligence on the part of the driver of the Tractor bearing Registration No.TN 28 AS 4846, and that he did not have the valid driving license to drive the vehicle, at the time of the accident. This portion of the finding is not in challenge before this Court. Therefore, the point for consideration before this Court is only in respect of the just compensation.

12. With respect to quantum of compensation, it is seen that the wife of the deceased was examined as P.W.1, who deposed in her evidence that the deceased was aged about 33 years and was earning Rs.20,000/- per month as a Load man. To prove the avocation and income of the deceased, the petitioners / appellants did not file any documents. In the absence of any material evidence, the Tribunal fixed a sum of Rs.6,000/- per month as the notional income of the deceased. The petitioner/appellant counsel urged that the notional income has to be increased. In this case, by relying Ex.P3- Postmortem Certificate, the age of the deceased was determined as 33 years. There is no dispute in respect of the age of the deceased.

13. As stated supra, the only objection projected by the learned counsel for the petitioners is that the notional income fixed at Rs.6,000/- per month is



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highly inadequate. Here, the accident is of the year 2016. It is an admitted case that the deceased was 33 years old at the time of the accident. Notwithstanding any fact, a hale and healthy person would definitely earn not less than Rs.10,000/- per month. Therefore, taking note of the year of accident, this Court determines a sum of Rs.10,000/- towards notional income. Further, as per the judgment of the Hon'ble Supreme Court, reported in **2017 (2) TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi & others)**, 40% to be added with the above notional income towards future prospects. The Tribunal has rightly taken the multiplier as '16', by following **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **2009 ACJ 1298 SC**. Here considering the 4 dependent family members, 1/4th of the monthly income to be deducted towards personal expenses of the deceased. Thus the loss of dependency works out to Rs.20,16,000/-. Accordingly, the compensation towards loss of dependency is hereby enhanced to Rs.20,16,000/-.

14. That apart, the Tribunal has awarded Rs.15,000/- towards funeral expenses, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards loss of estate, which, in the opinion of this Court, are just and reasonable, and hence, the same need not be interfered with.

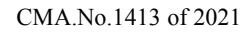


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15. But, the Tribunal has not awarded any amount of compensation under the heads 'Loss of Filial Consortium' to the appellants 2 to 4. Hence, this Court award a sum of Rs.1,20,000/- (40,000 X 3) towards 'Loss of Filial Consortium' to the children and mother of the deceased / appellants 2 to 4. Curiously, the Trial Court, awarded a sum of Rs.30,000/- towards Loss of spouse, which is incongruous and unwarranted. Hence, the same is hereby set aside.

16. Thus, the details of the modified compensation are as follows:

<i>S.No</i>	<i>Various Heads</i>	<i>Awarded by the Tribunal</i>	<i>Awarded by this Court</i>	<i>Award confirmed or enhanced or increased or reduced</i>
1.	Loss of Dependency	Rs.12,09,600	Rs.20,16,000	Enhanced
2.	Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Loss of Consortium to the first appellant	Rs.40,000/-	Rs.40,000/-	Confirmed
4.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Loss of spouse	Rs.30,000	---	Setaside
5.	Loss of Filial consortium of the appellants 2 to 4 at the rate of Rs.40,000/- each.	----	Rs.1,20,000	Awarded
	Total	Rs.13,09,600	Rs.22,06,000	Enhanced



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benefit and welfare of the minors. It is made clear that the appellants/claimants have to pay the appropriate Court fee, before receiving the awarded amount.

23.06.2023

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Index : yes/no

Speaking/Non Speaking Order

To

1. The Motor Accident Claims Tribunal,
(Sub Judge), Rasipuram.
2. The Section Officer,
V.R.Section, High Court,
Madras.



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C.KUMARAPPAN.J

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