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C.M.A.No.1621 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.1621 of 2022

1.Roopa

2.Minor. Menaka @ Megana

3.Narayanappa

4.Lakshamma

... Appellants

vs.

1.K.Devishree

2.The Branch Manager,
The New India Assurance Co. Ltd.,
Branch Office, No.81-A, Ingur Road,
Raja Indane Gas Complex, 1st Floor,
Mugasi Pidariyur,
Chennimalai – 638 051,
Erode District.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award and enhance the compensation amount made in Judgment and Decree dated 30.09.2016 made in M.C.O.P.No.41 of 2015 on the file of the Motor Accident Claims Tribunal



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and Subordinate Judge, Hosur, by allowing this Civil Miscellaneous Appeal.

For Appellants : Mr.S.P.Yuaraj

For R1 : No appearance

For R2 : Mr.N.Somasundar

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J U D G M E N T

This Civil Miscellaneous Appeal is filed to set aside the award and enhance the compensation amount made in Judgment and Decree dated 30.09.2016 made in M.C.O.P.No.41 of 2015 on the file of the Motor Accident Claims Tribunal and Subordinate Judge, Hosur, by allowing this Civil Miscellaneous Appeal.

2.The appeal is filed by the claimants for enhancement of compensation.

3.According to the claimants, on 15.06.2014, at about 03.20 p.m., while the deceased N.Muniraj was riding his two wheeler, an Innova car belonging to the first respondent insured with the second respondent driven



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by the driver in a rash and negligent manner dashed against the deceased's motor cycle from behind, thus causing the death of the deceased.

4. According to the claimants, the deceased was aged 24 years at the time of the accident and was earning a sum of Rs.25,000/- per month by running a provision store. The claimants therefore filed the claim petition claiming a sum of Rs.35,00,000/- as compensation.

5. The first respondent, the owner of the Innova car remained ex-parte before the Claims Tribunal and the claim petition was contested by the second respondent/Insurance Company. The second respondent/Insurance company filed its counter denying all the allegations and averments made in the claim petition, apart from disputing the negligence, liability and quantum.

6. Before the Claims Tribunal, the claimants examined two witnesses and marked Ex.P1 to Ex.P7 in support of the claim petition. On the side of the respondent neither any witness was examined nor any document



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marked.

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7.The Claims Tribunal on an assessment of entire evidence on record returned a finding of negligence against the driver of the first respondent, assessed the compensation at Rs.18,59,500/- along with 7.5% interest and mulcted the liability on the second respondent/Insurance company. Not satisfied with the award passed by the Claims Tribunal the claimants i.e. widow, minor child and the parents of the deceased have filed the above appeal.

8.The learned counsel appearing for the appellant submitted that the assessment of the notional income by the Tribunal was erroneous. The learned counsel further submitted that the Tribunal ought to have seen that the deceased was aged about 24 years at the time of accident, was running a provision store and maintaining a family of four members, apart from himself. The learned counsel therefore submitted that the amount awarded towards loss of income deserved to be enhanced.



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9.The learned counsel appearing for the respondent on the other hand submitted that the Claims Tribunal erred in adding 50% of the income towards future prospects, and also awarding a sum of Rs.2,50,000/- towards loss of consortium and loss of love and affection. The learned counsel therefore submitted that there were no merits in the appeal and the same deserved to be dismissed.

10.I have heard both the learned counsels and have perused the materials placed on records.

11.It was the claimants case that the deceased was running a provision store and earning a sum of Rs.25,000/- as income. In support of the claim, the claimants produced Ex.P6, licence for running the provision store. The Tribunal rejected Ex.P6, on the ground that the authority's signature was not found in Ex.P6. I have gone through Ex.P6 and I find that the same was signed by the official of Hebakodi Panchyat. Therefore, the Tribunal was not justified in rejecting Ex.P6. The Tribunal in the absence



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of any evidence assessed the notional income at Rs.6,500/-. As I have found that the Tribunal was not justified in rejecting Ex.P6, I am of the view that the notional income of the deceased can be fixed at Rs.9,000/- per month, (i.e.) at Rs.300/- per day. As rightly contented by the learned counsel for the respondent, the Tribunal erred in awarding 50% of the income towards future prospects. In my view, the claimants would be entitled to 40% of the income towards future prospects. The income of the deceased is therefore fixed at Rs.9,000/- per month, 40% is added towards future prospects, $\frac{1}{4}^{\text{th}}$ of the income is deducted towards the personal expenses of the deceased and the multiplier 18 appropriate to the age of the deceased is adopted. Therefore the compensation towards loss of income is assessed at Rs.20,41,200/- ($9000 \times 12 = 108000$; $108000 \times 40 / 100 = 43200$; $10800 + 43200 = 151200$; $151200 \times 18 = 2721600$; $2721600 / 4 = 680400$; $2721600 - 680400 = 2041200$).

12.The learned counsel for the respondent is justified in his submission that the award of the Tribunal towards loss of consortium and love and affection at Rs.2,50,000/- is against the Judgment of the



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Hon'ble Supreme Court in the case of *National Insurance Company Ltd.,*

WEB COPY *Vs. Pranay Sethi* reported in (2017) 16 SCC 680. Therefore I find that the

widow of the deceased would be entitled to Rs.40,000/- towards loss of consortium and the minor child and the parents of the deceased would be entitled to Rs.40,000/- each towards loss of love and affection. In view of the said discussions, the award of the Tribunal is modified as follows:

Sl.No.	Heads	Award of the Tribunal	Award of this Court
1	Loss of Income	Rs.15,79,500/-	Rs.20,41,200/-
2	Loss of Consortium	Rs. 50,000/-	Rs. 1,60,000/-
3	Loss of love and affection	Rs. 2,00,000/-	
4	Transport Expenses	Rs. 10,000/-	Rs. 10,000/-
5	Funeral Expenses	Rs. 20,000/-	Rs. 20,000/-
TOTAL		Rs.18,59,500/-	Rs.22,31,200/-

13.In the result, the claimants shall be entitled to Rs.22,31,200/- along with 7.5% interest. It is submitted by the learned counsel for the second respondent that the award passed by the Claims Tribunal has already been deposited. It is further submitted by the learned counsel for the second respondent that the appeal has been filed with a delay of 1891 days and the same was condoned on condition of forfeit use of interest for the delay



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period. In view of the said submission, there shall be a direction to the second respondent/Insurance Company to deposit the enhanced amount of Rs.3,71,700/- along with interest, less the interest for the delay period of 1891 days, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made the claimants shall be entitled to withdraw their respective shares as fixed by the Claims Tribunal, by making proper application before the Claims Tribunal.

14. Accordingly, the appeal is partly allowed. There shall be no order as to costs.

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Index : yes/no
Internet : yes/no
ah

To

1. The Motor Accident Claims Tribunal and
Subordinate Judge,
Hosur.

2. The Section Officer,
V.R. Section,
High Court, Madras.

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N.MALA, J.

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