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C.M.A.No. 847 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No. 847 of 2022

1. Krishnamurthy
2. Valli

... Appellants

Versus

1. K. Sivasubramanian
2. The Divisional Manager
The New India Assurance Company Limited
Divisional Office 1st Floor
Amman Complex, 1360, EVN Road
Erode - 638 011.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree dated 27.09.2021 made in M.C.O.P.No. 571 of 2020, on the file of Motor Accident Claims Tribunal, and Special District Court for Motor Accident Claims Cases, Krishnagiri.

For Appellants : Mr.S.P. Yuaraj
For R1 : No Appearance
For R2 : M/s. K. Thirunavukkarasu



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against the award and decree dated 27.09.2021 made in M.C.O.P.No. 571 of 2020, on the file of Motor Accident Claims Tribunal, and Special District Court for Motor Accident Claims Cases, Krishnagiri.

2. According to the claimants, on 01.01.2020 at about 16.00 hours, the deceased Govindraj was travelling in Tata van as a cleaner-cum-loading and unloading coolie. The driver of the Tata van drove the vehicle in a rash and negligent manner and in uncontrollable speed due to which the van capsized and fell into a ditch, resulting in the death of the said Govindraj.

3. The deceased was aged about 20 years at the time of accident and was working under the first respondent as cleaner-cum-loading and unloading coolie and was earning a sum of Rs.25,000/- per month. The deceased completed Diploma in Electronics and Communication Engineering from the Government Polytechnic College, Krishnagiri District and hence, the claimants filed the Claim Petition claiming a sum of



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Rs.50,00,000/- as compensation.

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4. Before the Tribunal, the first respondent remained ex-parte and the second respondent/Insurance Company contested the claim petition and filed a detailed counter affidavit denying all the averments made in the claim petition, apart from denying the negligence, liability and quantum of compensation.

5. Before the Tribunal, the first appellant was examined as PW1 and one an eye-witness, namely, Munirathnam, was examined as PW2. Ex.P1 to Ex.P11 were marked on the side of the Claimants. No oral or documentary evidence was marked on the side of the respondents.

6. The Claims Tribunal, on an assessment of the entire evidence on record, rendered a finding of negligence against the driver of the first respondent. The Tribunal awarded a sum of Rs.19,24,400/- as compensation along with 7.5% interest and fixed the liability on the second respondent/Insurance Company. Aggrieved by the quantum of compensation awarded by the Claims Tribunal, the claimants have filed the



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above appeal for enhancement of compensation.

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7. The learned counsel for the appellants submitted that the income was assessed by the Tribunal at Rs.12,000/- per month, which is very much on the lower side. According to the appellants counsel considering that the accident occurred in 2020, that the deceased was aged about 20 years at the time of accident and he was a Diploma Holder in Electronics and Communication Engineering, the Tribunal ought to have assessed, higher notional income.

8. The learned counsel for the second respondent/Insurance Company, on the other hand, submitted that according to the claimants own averments in the claim petition, the deceased was working as Cleaner in the offending vehicle at the time of accident. The Tribunal was justified in fixing the notional income at Rs.12,000/- as there was no proof filed to support the income earned by the deceased. The counsel therefore submitted that the award of the Tribunal was just, fair and reasonable and did not call for any interference.



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

10. Admittedly, the deceased was aged about 20 years at the time of accident which occurred on 01.01.2020. On a perusal of Ex.P9, it is seen that the deceased had completed Diploma in Electronics and Communication Engineering (full time) in Government Polytechnic College, Krishnagiri District. It is further seen that the deceased had participated in the physical test for Indian Army, which is evident from Ex.P10 and Ex.P11.

11. In the light of the said facts, I am of the view, that the income of the deceased, assessed by the Tribunal at Rs.12,000/- per month, is on the lower side and the same is hereby fixed at Rs.18,000/- per month.

12. The notional income is fixed at Rs.18,000/- p.m., 50% is deducted towards the deceased's personal expenses, 40% is added towards future prospects and the multiplier 18 is adopted. [Rs.18,000 x 50/100 = Rs.9000/- x 40/100 = Rs.3600/-]. Thus the monthly income of the



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deceased would be Rs.12,600/- per month. Hence, the loss of income is arrived at Rs.12,600 x 12 x 18 = Rs.27,21,600/-. Therefore, the Claimants are entitled for enhanced compensation of Rs.27,21,600/-. The other heads awarded by the Tribunal are confirmed.

13. In view of the above discussion, the award of the Tribunal is modified as follows:-

<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Loss of dependency	Rs.18,14,400	Rs.27,21,600
2.	Loss of Estate	Rs.15,000	Rs.15,000
3.	Funeral Expenses	Rs.15,000	Rs.15,000
4.	Filial Consortium	Rs.80,000	Rs.80000
Total		Rs.19,24,400	Rs.28,31,600

14. The claimants are entitled for enhanced compensation of Rs.28,31,600/- along with 7.5% interest. There shall be a direction to the Second Respondent/Insurance Company to deposit the enhanced compensation after deducting the amount already deposited, if any, with interest as stated above within a period of eight weeks from the date of receipt of a copy of this judgment. The apportionment of shares shall be as fixed by the Tribunal. The claimants are directed to pay the necessary Court Fee on the enhanced compensation, if not already paid.



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15. Accordingly, the Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

To

1.The learned Chief Judge, Small Causes Court,
Motor Accidents Claims Tribunal, Chennai.

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



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N.MALA.J.,

msm

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