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CMA No. 845 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 845 of 2022

1.A.Balaji

2.A.Rukmani

... Appellants

Versus

1.Akram

2.N.Krishnan

3.The Shriram General Insurance Co.Ltd.,
10002 – E-8 RIICO, Industrial Area,
Sitapura, Jaipur, Rajasthan - 302022.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 59 of 1988 seeking to enhance the compensation amount made in Judgment and decree dated 08.10.2021 made in M.C.O.P. No.333 of 2014 on the file of the Motor Accident Claims Tribunal and Special District Court for Motor Accident Claims Cases, Krishnagiri by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr. S.P. Yuvaraj.

For Respondents : No appearance for R1 & R2.

Mr. K. Poomalai for R3.



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J U D G M E N T

The appeal has been filed by the petitioners challenging the quantum of compensation awarded by the Tribunal in M.C.O.P. No. 333 of 2014 dated 08.10.2021.

2.The appellant had filed a claim petition stating that on the date of accident i.e., on 17.03.2011 at about 04.30 p.m., while the deceased was walking near Vanaganapalli Diversion Road, the owner-cum-driver of the Maruthi Omni Car bearing Registration No.KA-08-N-403 drove the said car in a rash and negligent manner and dashed the deceased as a result of which the deceased sustained fatal injuries and died on the spot and Cr.No. 48 of 2011 was registered for the offence under Sections 279 and 304(A) of the Indian Penal Code.

3.The third respondent filed a counter denying all the averments made in the claim petition and stated that in any case, the claim was excessive.

4.The first and second respondents remained ex-parte before the



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tribunal.

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5.The first appellant examined himself as PW1 and marked Ex.P.1 to Ex.P.9 and one Srinivasan, who is the eye-witness of the occurrence has been examined as PW2. No witness was examined and no document was marked on the side of the third respondent.

6.The Tribunal after considering the oral and documentary evidence filed on the side of the appellants awarded a compensation of Rs.8,90,000/- to the appellants. Aggrieved by the said order, the appellants had preferred the instant appeal.

7.The learned counsel for the appellants submitted that the tribunal ought to have fixed the monthly income of the deceased as per the Judgment of this Court in *Andal and others Vs. Avinan Kannan and another* reported in **2019 (1) TN MAC 54 (DB)** as Rs.9,000/- and thus prayed for enhancement of the compensation.

8. However, the learned counsel for the third respondent submitted that the enhancement claimed by the learned counsel for the appellants



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cannot be considered and submitted that the tribunal had correctly considered the evidence on record and fixed just compensation at Rs.8,90,000/- and prayed for dismissal of the appeal.

9.This Court finds that in cases where the claimants have not established the income, a notional income is fixed. However, this Court finds that there is no basis while fixing the notional income. It depends on the nature of the job done by the deceased / claimant and most of the times, it is left to the discretion of the Court. The Division Bench of this Court in *Andal's case (cited supra)*, had adopted the method by which the notional income was fixed on the basis of the cost of inflation index determined by Central Board of Direct Tax (CBDT). The Honourable Division Bench took into consideration the income at Rs.6500/- as the income for a flower vendor in the year 2018 based on the Judgment of the Honourable Apex Court in *Syed Sadiq Vs. United Insurance Co.Ltd.*, reported in **2014 (1) TN MAC 459** . The cost of inflation index for the year 2008 is 129. Thus, the Division Bench for an accident that took place in the year 2018, calculated the notional income by multiplying Rs.6500 X Cost of inflation index for the year 2018 / cost of inflation index for the year 2008. By applying the said method, the



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monthly income of the deceased is determined as follows; Rs.6,500/- x 184 (cost of inflation index for the year 2011 – 2012 since the accident occurred on 17.03.2011) / 129 (cost of inflation index for the year 2007 – 2008) = Rs.9,271.317/- rounded off to Rs.9,000/-. Thus, the monthly income of the deceased is fixed as Rs.9,000/-. After deducting 1/3 towards personal expenses, the sum would be Rs.6000/-. By adding 25% towards future prospects, the income would be Rs.7,500/-. Hence, the loss of income of the deceased is arrived at Rs.7500 x 12 x 13 = Rs.11,70,000/-. The award under the other heads remains the same. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	7,80,000/-	11,70,000/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Funeral Expenses	15,000/-	15,000/-	Confirmed
4.	Loss of Consortium	80,000/-	80,000/-	Confirmed
	Total	Rs.8,90,500/-	Rs.12,80,000/-	Enhanced by Rs.3,89,500/-

10. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,90,000/- is hereby enhanced to Rs.12,80,000/- together with interest



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at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The third respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit the appellants are permitted to withdraw the award amount as per the apportionment fixed by the tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay the necessary Court Fee if any on the enhanced award amount. No costs.

07.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Motor Accident Claims Tribunal,
Special Court for Motor Accident Claims Cases,
Krishnagiri.



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SUNDER MOHAN, J

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