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C.M.A.No.2270 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2270 of 2021

Murugammal

... Appellant/Claimant

Vs.

1. Mr. G. Premkumar

2. The Branch Manager,
National Insurance Company Ltd.,
Branch Office, D. No.19/8,
S. R. Complex, Rajamani Thottam,
Bhavan Main Road, N.H.47,
Sankagiri, Salem – 636 6001.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 14.11.2016 made in M.C.O.P.No.208 of 2016 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellants	:	Mr. S. P. Yuvaraj
For R1	:	No appearance
For R2	:	Mr. J. Michael Visuvasam



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant for enhancement of compensation against the award passed in M.C.O.P.No.208 of 2016, dated 14.11.2016, on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri, for the death of their son in the road accident.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimant is that on 21.09.2015 at about 6.00 p.m., the deceased Muthuvel, the son of the petitioner was riding his motorcycle bearing Registration No. TN 24 E 1075 towards Tirupur on the Manjamedu to Tiruppur road along with one Palanivel as a pillion rider, while they were reached near Buttapankadai Bus stop, a private bus bearing Registration No.TN 52 A 6799 came in the opposite direction in rash and negligent manner and dashed against the motorcycle and caused accident and that the deceased sustained several injuries and subsequently he succumbed to the injuries. The deceased was aged about 22 years and was



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studying M.Sc., Maths at Sri Vidhya Mandjir College, at Uthangarai. In this regard, a criminal case was also registered against the driver of the bus in Crime No.434 of 2015 under Sections 279, 337 and 304 A IPC on the file of the Barur Police Station.

4. The first respondent has not contested the claim and was remained ex-parte. The second respondent has contested the claim filed counter and contended that the rider of the two-wheeler has negligently drove the car and despite of due care and caution, the driver met with an accident and hence the Insurance Company is not liable to pay any compensation to the claimants. They have also disputed the Education qualification of the deceased and quantum of compensation claimed. Hence, prays to dismiss the appeal.

5. Before the Tribunal, on the side of the petitioner, PW.1 and P.W.2 were examined and Exs.P1 to P8 were marked. On the side of the second respondent no oral and documentary evidence marked.



6. Based on the evidences placed on record, in Point No.1, the Tribunal has held that the driver of the bus alone is responsible for the accident. In Point No.3, the Tribunal has quantified the compensation and awarded a sum of Rs.15,80,000/- as compensation along with interest at the rate of 7.5% per annum.

7. Aggrieved over the quantum of compensation awarded, the claimant has come out with this appeal seeking enhancement of compensation.

8. The learned counsel for the claimant has submitted that the notional income fixed by the Tribunal is not in accordance with the norms followed by this Court for the accident occurred in the year 2015 and the age of the deceased. In this case, the age of the deceased is 22 years and the Tribunal has awarded Rs.10,000/- as notional income which is on the lower side hence prays to enhance the award. He has also contended that the compensation awarded under various other heads are also on the lower side and prays to revise the same.



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9. The learned counsel for the Insurance Company has vehemently contended that the Tribunal has fixed the quantum of compensation based on the evidences placed on record and the Tribunal has awarded compensation under various other heads is also just and proper and reasonable, hence prays to dismiss the appeal.

10. I have considered the rival submissions made on both sides and also perused the records available on record.

11. Before the Tribunal, the claimants have marked various College Certificates issued by the Principal of Sri Vidhya Mandhir College of Arts and Science, Uthangarai, to show that the deceased herein was studied M.Sc., Maths, II year. It is also the evidence of P.W.1 that his son was a brilliant student and after completing B.Sc., with high marks, he joined M.Sc., and he was the only breadwinner of the family. However, there is no evidence to show that the deceased was doing any avocation and any document to prove the income of the deceased was also not produced and based on the evidences placed on record, the Tribunal has fixed the notional income of the deceased as Rs.10,000/- per month. This Court is of the view



that since the deceased was a graduate and considering the date of accident, fixing the notional income of the deceased as Rs.13,000/- per month would be appropriate. Accordingly, this Court fixed the notional income of the deceased as Rs.13,000/- per month. As per the Judgment of the Hon'ble Apex Court in *National Insurance Company Ltd., vs. Pranay Sethi and others* [2017 (16) SCC 680], the claimant is entitled to get 40% future prospects and the petitioner is being a bachelor 50% to be deducted as personal expenses of the deceased. The Tribunal has applied multiplier '15' is not proper since the age of the deceased at the time of accident is about 22 years, as per the Judgment of the Hon'ble Apex Court in *Sarla Verma and Others vs. Delhi Transport Corporation and Another* [2009 (2) TNMAC 1 SC : 2009 (6) SCC 121], the proper multiplier is '18'. Accordingly, the loss of income arrived at Rs.19,65,600/- [13,000 + 5200 (40% of 13000) x 12 x 18 x 1/2].

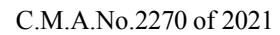
12. The Tribunal has also awarded Rs.2,00,000/- separately under the head loss of love and affection and this Court is of the view that the same is on the higher side and the Judgment of the Hon'ble Apex Court in *Pranay Sethi and others* case cited above the compensation under the



head of loss of consortium to be awarded. Hence, the head loss of love and affection is hereby reduced to Rs.40,000/-. Similarly, the Tribunal has awarded funeral expenses a sum of Rs.25,000/- and this Court is inclined to reduce the same to Rs.15,000/-. The Tribunal has not awarded any amount under the head loss of estate and this Court is inclined to award Rs.15,000/- under the head loss of estate. The Tribunal has awarded a sum of Rs.5,000/- under the head Transportation charges. The evidences placed on record shows that the deceased was died within two days after the accident hence the compensation awarded under the head Transport Charges for a sum of Rs.5,000/- is hereby confirmed.

13. Thus the compensation awarded by the Tribunal under various heads are hereby 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 earnings	Rs.13,50,000/-	Rs.19,65,600/-	Enhanced
2.	Transport to Hospital	Rs.5,000/-	Rs.5,000/-	Confirmed
3.	Funeral Expenses	Rs.25,000/-	Rs.15,000/-	Reduced
4.	Loss of Love and affection/Loss of Consortium	Rs.2,00,000/-	Rs.40,000/-	Reduced



5.	Loss of Estate	---	Rs.15,000/-	Granted
	Total Compensation	Rs.15,80,000/-	Rs.20,40,600/- -	Enhanced by Rs.4,60,600/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.15,80,000/- is hereby enhanced to Rs.20,40,600/- [Rupees Twenty Lakhs Forty Thousand and Six Hundred only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.208 of 2016, on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri. On such deposit, the appellant/claimant is permitted to withdraw the amount, now awarded by this Court, along with interest and costs, less the amount, if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant, without any formal application.



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In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

02.11.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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K.RAJASEKAR,J.

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