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CMA No.1241 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

CMA No.1241 of 2023

1. Elumalai

2. Kamala

....

Appellants

Vs

1. Arun Prasad

2. The New India Assurance Company Ltd.,

No.232, LIC Building 6th Floor,

TP HUB, NSC Bose Road, Opp to High Court,

Chennai – 600 001.

....

Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, for enhancing the compensation awarded in the Judgment and Decree dated 24.02.2022 passed in M.C.O.P.No.5940 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes at Chennai.

For Appellant : Mr.Amar Dineshbhai Pandiya

For R1 : Exparte

For R2 : Mr.J.Chandran



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JUDGMENT

This appeal is filed by the claimants seeking enhancement of compensation. The parents of the deceased Boopalan, who died in a road accident on 25.10.2019, filed the Claim Petition seeking compensation of Rs.40,00,000/- for his death.

2. The brief facts leading to the appeal are that, on 25.10.2019, while the deceased was travelling as a pillion rider in a motorcycle, a private bus, belonging to the first respondent, driven by its driver in a rash and negligent manner hit the deceased's motorcycle, resulting in his death.

3. According to the claimants, the parents of the deceased, the deceased was aged about 18 years, working in FP Bakery Shop and earning Rs.15,000/- per month.

4. The first respondent in the claim petition remained ex-parte and the second respondent/Insurance Company contested the claim petition by filing a counter denying the negligence, liability and quantum of compensation, apart from denying other averments.



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5. Before the Claims Tribunal, two witnesses were examined on the side of the claimants and Exs.P1 to Ex.P15 were marked in support of their case. On the side of the respondent, no documentary or oral evidence was adduced.

6. The Claims Tribunal, on an assessment of entire evidence on record, concluded that the negligence of the driver of the bus, resulted in the accident. The Tribunal awarded a sum of Rs 11,75,000/- along with 7.5% p.a interest as compensation and mulcted the liability on the second respondent Insurance Company.

7. Not satisfied with the compensation awarded by the Claims Tribunal, the claimants have filed the above appeal.

8. Learned counsel appearing for the claimants/appellants submitted that the deceased was working in FP Bakery Shop and earning a sum of Rs.15,000/- per month and therefore, the Tribunal, without considering the same, fixed the notional income at Rs.60,000/- per annum. The learned counsel further submitted that the Tribunal failed to



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award any sum towards loss of estate. The learned counsel therefore prayed the award of the tribunal deserved to be modified.

9. Learned counsel appearing for the respondent on the other hand submitted that the award of the Tribunal was fair, just and reasonable and did not call for any interference in the appeal.

10. I have heard both the learned counsel and perused the materials placed on record.

11. The only point for consideration in this appeal is whether the claimants are entitled for enhanced compensation. It is no doubt true that there is no evidence to prove the income of the deceased. In view of the cost of escalation for the year 2019, the notional income can be fixed at Rs.10,000/- per month, 40% of the notional income is taken towards future prospects and 50% is deducted towards the personal expenses of the deceased. Therefore, the compensation towards loss of dependency is arrived at Rs.15,12,000/- $[Rs.10,000 + (Rs.10,000 \times 40\%) \times 12 \times 18 \times \frac{1}{2} = 15,12,000]$



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12. The submission of the learned counsel for the appellants/claimants that the Tribunal erred in not awarding Rs.15,000/- towards loss of estate is justified and hence, Rs.15,000/- is awarded towards loss of estate.

13. In the light of the above discussions, the award of the claims Tribunal is modified as follows:

S.No	Various Heads	Award by Tribunal (amount in Rs.)	Award by this Court (amount in Rs.)
1.	Loss of Income	10,80,000/-	15,12,000/-
2.	Loss of Consortium	80,000/-	80,000/-
3.	Funeral Expenses	15,000/-	15,000/-
4.	Loss of estate	-	15,000/-
Total compensation		11,75,000/-	16,22,000/-

14. The Appellants/claimants shall be entitled to enhanced compensation of Rs.16,22,000/- along with interest at the rate of 7.5% p.a.

15. It is submitted by the learned counsel for the second respondent that the appeal was filed with the delay of 285 days and the delay was condoned by this Court on condition of forfeiture of the interest for the delay period of 285 days. It is therefore made clear that the



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claimants shall not be entitled to the interest for the delay period of 285 days. It is submitted by the learned counsel appearing for the second respondent that the Insurance Company already deposited the entire award amount along with accrued interest and cost.

16. In view of the said submission, the second respondent/Insurance Company is directed to deposit the balance amount of the enhanced compensation along with interest at the rate of 7.5% p.a. within a period of eight (8) weeks from the date of receipt of a copy of this order. It is made clear that the appellants are not entitled to interest for the delay period of 285 days in preferring the appeal. On such deposit is being made, the claimants shall be entitled to withdraw the same in the ratio fixed by the Tribunal by making appropriate application before the Tribunal.

17. In the result, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

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Index :Yes/No

Internet :Yes/No

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To
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1.The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes at Chennai.

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



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N.MALA, J.

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