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C.M.A.No.857 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

CMA.No.857 of 2023

1. A.Sasikumar
2. S.Indhu
3. S.Gowtham
4. S.Sujitha

...Appellants

Vs.

1. Senthilkumarraj
2. United India Insurance Company Limited,
Attur Branch by its Manager,
Door No.702/D, 1st floor,
Kamarajanar Road, Attur Taluk,
Salem District.

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, challenging the Judgment and Decree passed in M.C.O.P.No.300 of 2019 dated 08.11.2022 passed by the learned Subordinate Judge, Motor Accident Claims Tribunal, Rasipuram.

For Appellant : Mr.M.Lokesh

For Respondents : R1 – Ex-parte
Mrs.R.Sreevidhya for R2



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JUDGMENT

This appeal is filed by the claimants challenging the Judgment and Decree passed in M.C.O.P.No.300 of 2019 dated 08.11.2022 by the learned Subordinate Judge, Motor Accident Claims Tribunal, Rasipuram, seeking enhancement of compensation.

2 The husband and children of the deceased have filed the claim petition seeking a sum of Rs.25,00,000/- as compensation for the death of wife of the first claimant and mother of claimants 2 to 4 in the motor accident which occurred on 26.09.2019. On 26.09.2019 while the deceased was riding her TVS XL Super two wheeler, the Driver of the Ashok Leyland Mini Lorry belonging to the first respondent and insured with the second respondent drove his vehicle in a rash and negligent manner and hit the deceased from behind, due to which the deceased sustained fatal injuries and died on 30.06.2019.

3 The first respondent owner of the offending vehicle remained ex-parte before the Tribunal. The claim petition was contested by the second respondent Insurance company and they filed detailed counter denying all the



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averments and allegations made in the claim petition apart from questioning the negligence, liability and quantum of compensation.

4 Before the claims Tribunal, the claimants examined 3 witnesses as P.Ws.1 to 3 and marked Exs.P1 to P23. On the side of the respondents no oral and documentary evidence was let in.

5 The claims Tribunal, on an assessment of the entire evidence on record, awarded a sum of Rs.17,78,614/- along with 7.5% interest. Not being satisfied with the compensation awarded by the claims Tribunal, the claimants have filed the above appeal seeking enhancement of compensation.

6 Learned counsel for the appellant submitted that the only point raised in the appeal is whether the notional income assessed by the Tribunal is fair and just. He further submitted that even though there is no document in support of the income of the deceased, the Tribunal considering the age of the deceased and cost of living prevailing at the time of accident, ought to have fixed reasonable income of Rs.15,000/- p.m.

7 Learned counsel for the second respondent/Insurance Company, on



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the other hand, submitted that the Tribunal, in the absence of any evidence, was justified in assessing the notional income at Rs.10,000/-p.m. and therefore the award of the Tribunal was just, fair and reasonable and did not call for any interference by this Court.

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

9 The deceased was aged about 44 years at the time of accident and was working as Manager in Micset Shop. Even though no documentary evidence was filed to prove the actual income of the deceased, considering the age of the deceased, year of the accident and the economic conditions prevailing in the year 2019, I fix the notional income at Rs.12,000/- p.m. Since, the deceased was aged 44 years at the time of accident, 25% of the income is added towards future prospects. $\frac{1}{4}$ th of the income is deducted towards personal expenses.

$$\text{Rs.12000/-} \times 12 = 1,44,000/-$$

$$\text{Rs.1,44,000/-} + \text{Rs.36,000/-} (25\%) = \text{Rs.1,80,000/-}$$

$$\text{Rs.1,80,000/-} \times \frac{1}{4} = \text{Rs.45,000/-}$$

$$\text{Rs.1,80,000/-} - \text{Rs.45,000/-} = \text{Rs.1,35,000/-}$$



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Hence the annual contribution comes around Rs.1,35,000/-.

Loss of Dependency comes to Rs.1,35,000/- x 14 = Rs.18,90,000/-

10 In view of the said discussions the award is modified as follows:

<i>Sl. No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Loss of Dependency	15,75,000.00	18,90,000.00
2.	Loss of Estate	15,000.00	15,000.00
3.	Funeral Expenses	15,000.00	15,000.00
4.	Loss of Filial Consortium	1,60,000.00	1,60,000.00
5.	Medical Bills	13,614.00	13,614.00
TOTAL COMPENSATION		17,78,614.00	20,93,614.00

11 The claimants are therefore entitled to enhanced compensation of Rs.20,93,614/- along with 7.5% interest from the date of claim petition till the date of realisation. The second respondent is directed to deposit the enhanced compensation along with 7.5% interest, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant shall be entitled to withdraw the same as



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per the apportionment made by the claims Tribunal by making proper application before the Tribunal. Accordingly the appeal is partly allowed. There shall be no order as to costs.

21.06.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

To

1. The Subordinate Judge, Motor Accident Claims Tribunal, Rasipuram.
2. The Section Officer, V.R.Section, High Court, Madras.