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C.M.A.No.1001 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.1001 of 2022

- 1.Dheivapiravi
- 2.S.Sudhan
- 3.S.Suvithiran
- 4.Minor S.Suman
- 5.Dikkamani

[Minor 4th petitioner is represented by
his Natural Guardian mother 1st
appellant herein]

... Appellants

vs.

- 1.V.Balaji
- 2.Divisional Manager,
Third Party Service Hub,
Plot No.35, 36, 37, AR Plaza,
45 Feet Road, Balaji Nagar Extension,
Saram,
Puducherry – 605 011.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow the appeal and enhance the compensation in M.C.O.P.No.453 of 2019 dated 02.09.2021 on the file of the Motor



C.M.A.No.1001 of 2022

Accidents Claims Tribunal/Special Sub Judge, Cuddalore.

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For Appellants : Ms.Ramya V. Rao
For R1 : No appearance
For R2 : Mr.S.Arun Kumar

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J U D G M E N T

This Civil Miscellaneous Appeal is filed to allow the appeal and enhance the compensation in M.C.O.P.No.453 of 2019 dated 02.09.2021 on the file of the Motor Accidents Claims Tribunal/Special Sub Judge, Cuddalore.

2.The claimants have filed the above appeal for enhancement of compensation.

3.According to the claimants, on 01.04.2018, at about 06.45 p.m. when the deceased was walking on the extreme left side of the Cuddalore-Pondy main road, the first respondent drove his motor cycle in a rash and negligent manner and dashed against the deceased, causing him fatal injuries. The deceased was aged about 45 years at the time of accident and as a mason was earning Rs.18,000/- per month. The claimants, wife, three



C.M.A.No.1001 of 2022

sons and mother of the deceased therefore filed the claim petition seeking compensation of Rs.25,00,000/-.

4.The first respondent remained ex-parte before the Tribunal. The claim petition was contested by the second respondent/Insurance Company. The second respondent/Insurance Company filed a detailed counter denying all the allegations and averments made in the claim petition, apart from disputing the negligence, quantum and liability.

5.Before the Claims Tribunal, the widow of the deceased examined herself as PW1 and examined one other witness as PW2. Ex.P1 to Ex.P8 were marked in support of the claim petition. The second respondent neither examined any witnesses nor marked any documents.

6.The Claims Tribunal on an assessment of the evidence on record returned a finding of negligence against the first respondent. The Claims Tribunal assessed the compensation at Rs.22,15,000/- along with 7.5% interest and mulcted the liability on the second respondent/Insurance



C.M.A.No.1001 of 2022

company. Not satisfied with the award passed by the Claims Tribunal, the claimants have filed the above appeal seeking enhancement of compensation.

7.It is submitted by the learned counsel for the appellants that the Claims Tribunal erred in assessing the notional income at Rs.12,000/-. The learned counsel submitted that considering that the deceased was aged only 47 years and was doing masonry work, the Claims Tribunal ought to have assessed the income at Rs.18,000/- per month. He further submitted that the award towards love and affection and loss of consortium were on the lower side and not in conformity with the Judgment of the Hon'ble Supreme Court in the case of Pranay Sethi case reported in 2017 (16) SCC 680. The learned counsel therefore prayed that the compensation may be enhanced.

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



C.M.A.No.1001 of 2022

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

10.It is seen that the accident took place on 01.04.2018. The deceased was aged 47 years at the time of the accident and was a Mason. Though the income claimed at Rs.18,000/- is not supported by any documentary evidence, considering that the deceased was maintaining a family of five members and doing Masonary work and as the accident took place in the year 2018, in my view it will be fair to fix the notional income at Rs.14,000/- per month. As the deceased was aged 47 years at the time of accident, 25% of the income is added towards future prospects and $\frac{1}{4}^{\text{th}}$ is deducted towards personal expenses. Therefore the claimants will be entitled to Rs.22,05,000/- towards pecuniary loss ($14000 \times 25\% = 3500$; $14000 + 3500 = 17500 \times 12 \times 14 - \frac{1}{4} = 22,05,000/-$). The learned counsel for the appellant has fairly submitted that the award of Rs.2,50,000/- towards loss of love and affection to the claimants is not in confirmity with the Judgment of the Hon'ble Supreme Court in Pranay Sethi case cited supra. The claimants shall be entitled to Rs.2,40,000/- towards loss of consortium and love and affection at Rs.40,000/- each. In view of the said



C.M.A.No.1001 of 2022

discussions, the award of the Claims Tribunal is modified as follows:

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Sl. No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Pecuniary loss	Rs.18,90,000/-	Rs.22,05,000/-
2	Loss of Love and Affection	Rs. 2,50,000/-	Rs. 1,60,000/-
3	Loss of consortium	Rs. 40,000/-	Rs. 2,40,000/-
4	Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
5	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-
4	Transportation	Rs. 5,000/-	-
TOTAL		Rs.22,15,000/-	Rs.26,35,000/-

11.The claimants shall be entitled to a sum of Rs.26,35,000/- along with 7.5% interest. It is submitted by the learned counsel for the second respondent/Insurance company that the compensation awarded by the Tribunal along with the accrued interest and costs has already been deposited. In the light of the said submission, there shall be a direction to the second respondent/Insurance company to deposit the balance enhanced amount of Rs.4,20,000/- along with 7.5% interest, from the date of the claim petition till the date of realisation, within a period of eight weeks from the



C.M.A.No.1001 of 2022

date of receipt of a copy of this order. On such deposit, the claimants shall be entitled to withdraw the said amount as per the apportionment fixed by the Tribunal by making proper application before the Tribunal.

12.In the result, this Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs.

20.06.2023

Index : yes/no

Internet : yes/no
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To

1.The Motor Accidents Claims Tribunal/
Special Sub Judge,
Cuddalore.

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



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C.M.A.No.1001 of 2022

N.MALA, J.

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C.M.A.No.1001 of 2022



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C.M.A.No.1001 of 2022

20.06.2023