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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.1969 of 2021

and

C.M.P.No.2457 of 2023

1.Selvarani

2.Sakthivel

3.Minor Sarmila

rep., by Natural Guardian NF Selvarani

4.Kalyani

... Appellants

Vs.

1.Vasanth

2.The New India Assurance Co., Ltd.,

No.99./c-3, 1st Floor,

Opp., new bus stand, Perambalur,

rep., by its Branch Manager

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to allow the appeal and enhance the compensation in M.C.O.P.No.815 of 2018 dated 23.02.2021 on the file of the Motor Accident Claims Tribunal/ Sessions Judge, Perambalur.

For Appellant : M/s.C.Vidhusan

For respondents : Mr.G.Anandan for R2



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3. The first respondent remained *exparte* and the claim was contested by the second respondent. The second respondent in its counter denied all the averments made in the claim petition apart from disputing the negligence, liability and quantum. The second respondent contended that the deceased was not wearing helmet at the time of accident and hence he contributed to the accident.

4. Before the Claims Tribunal the widow of the deceased examined herself as P.W.1 and she also examined the brother of the deceased who was riding the two wheeler as P.W.2. Exs.P.1 to P.9 were marked on the side of the claimants in support of their case. The respondents neither marked any document nor examined any witness.

5. The Tribunal on assessment of the entire evidence on record returned a finding of negligence against the driver of the first respondent, awarded a sum of Rs.9,41,200/- towards compensation and mulcted the liability on the second respondent insurance company. The claimants not satisfied with the award have come by way of this appeal seeking enhancement of compensation.



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6. The learned counsel for the appellant submitted that the assessment of notional income at Rs.8,000/- by the Tribunal was erroneous. According to the learned counsel, as the accident took place in the year 2018, the notional income of the deceased could not be Rs.8,000/- only. The learned counsel further submitted that the Tribunal failed to award any compensation towards parental consortium to the children of the deceased. The learned counsel therefore prayed for enhancement of compensation on the said submissions.

7. The learned counsel for the respondent on the other hand submitted that the assessment of compensation by the Claims Tribunal was just, fair and reasonable and did not call for any interference by this Court. The learned counsel further submitted that as the deceased was not wearing helmet at the time of accident, as per the judgment of this Court, the Tribunal ought to have deducted 10% towards contributory negligence.

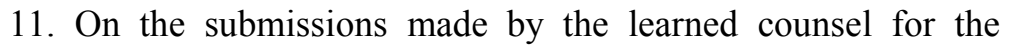
8. I have heard both the learned counsels and perused the entire materials placed on record.



9. It is seen that the deceased was aged about 51 years at the time of accident and was doing agricultural work as well as milk business as evidenced as Exs.P.6 and P.7. The accident had took place in the year 2018, hence the assessment of income at Rs.8,000/- in my view is very meagre.

10. Therefore following the Division Bench judgment of this Court in *Andal vs. Avinav Kannan*, reported in 2019 (1) TN MAC 54DB , the notional income of the deceased is assessed as follows:

$6500 \times 280/129 = 14,108/-$ if 10%(Rs.1,410) is added towards future prospects, the monthly income of the deceased would be Rs.15,518. Therefore, the annual income of the deceased would be Rs.1,86,216/-, out of which, 1/4th sum (Rs.46,554/-) has to be deducted towards the personal expenses of the deceased. Therefore, loss of income would be Rs.15,36,282/-. I am in agreement with the submissions of the learned counsel for the appellant that the children and the mother of the deceased would be entitled to loss of consortium at Rs.40,000/- each, therefore a sum of Rs.1,20,000 is awarded towards loss of consortium. On other aspects, I have find the award of the Tribunal is just, fair and reasonable.



S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	8,71,200/-	15,36,282/-	Enhanced
2.	Loss of Consortium	40,000/-	1,20,000/-	Enhanced
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.9,41,200/-	Rs.16,86,282/-	Enhanced by Rs.7,45,082/-

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annum from date of accident till date of deposit. The insurance company is directed to deposit the enhanced compensation of Rs.16,86,282/- less the amount, if any, already deposited within a period of eight weeks from the date of receipt of copy of this order. The apportionment of the compensation shall be as per the order of the Tribunal. On such deposit being made, the appellants 1 and 2 are permitted to withdraw their share by making appropriate application before the Tribunal and as far as the third appellant minor is concerned the same shall be deposited in a fixed deposit in any one of the nationalized bank as directed by Tribunal in its order. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

31.03.2023

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Index : Yes/No

Neutral Citation : Yes/No



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N.MALA, J.
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To:

- 1.The Motor Accidents Claims Tribunal
Sessions Judge, Perambalur.
- 2.The Section Officer,
VR Section, High Court, Madras.

C.M.A.No.1969 of 2021

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