IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

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THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.2018 of 2018

1.J.Gnanaprakasi
2.J.Arokiamary
3.J.Maria Regina
4.J. Joseph Raj
5.J. Maria Selvam ..Appellants

Vs.

1.N.Venugopal
2.The United India Insurance Co., Ltd.,
No.48, Arcot Road, Saligramam,
Chennai – 93. ...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order dated 11.03.2016 made in M.AC.T.O.P.No.755 of 2014 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Poonamallee.

For Appellants : Ms.Subathra
for Ms.M.Malar

For Respondents : Mr.S.Arun Kumar for R2
R1 – Set Exparte

<u>JUDGMENT</u>

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 11.03.2016 passed in M.A.C.T.O.P.No.755 of 2014 on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Poonamallee.

2.The case in brief, is as follows:

On 06.08.2014, at about 07.00 a.m., while the deceased who was proceeding as a pillion rider in Bajaj M-80 from Thiruninravur to Periyapalayam Road, Kavanoor, Periyar Nagar, in front of Yasmin Chicken Center, South to North direction, on the motor cycle bearing Regn.No.TN-20-B-2040, a Mahendra Tourist Van bearing Regn.No.TN-21-P-746 belonging to the first respondent, driven by its driver in a rash and negligent manner, came in the opposite direction, dashed against the deceased motor cycle. Due to the said impact, the deceased sustained multiple and grievous injuries, admitted in the Government Hospital Thiruvallur. Inspite of treatment, he died in the Hospital. The claimants/appellants are the wife and children of the deceased who filed a claim petition before the Tribunal, claiming a sum of Rs.15,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.7,95,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

3. Challenging the same, the appellants/claimants have filed the present Civil Miscellaneous Appeal.

4. The learned counsel for the appellants/claimants has submitted that the Tribunal failed to consider the evidences of PW1 and PW2 and the documents marked through them while awarding compensation. It has failed to consider that the deceased was earning Rs.15000/- per month and it has wrongly fixed Rs.5000/- per month as the income of the deceased. It has failed to adopt the proper multiplier method as provided in the Motor Vehicles Act. It ought to award compensation under the heads of mental agony, transportation, loss of estate, future prospectus and pain and sufferings. He further submitted that the Tribunal failed to award an adequate compensation under the heads of funeral expenses, love and affection and loss of consortium. The quantum of compensation awarded by the Tribunal is grossly low. He further submitted that the Tribunal erred in

computing loss of dependency. The deduction for personal expenses and multiplier are also erroneous. It is further submitted that in the absence of proof of income, the Tribunal erred in fixing Rs.5000/- as monthly income of the deceased. It has not properly considered the evidences and the documents marked in granting awards under various heads. Hence, he prays for enhancement of the appeal.

5.The learned counsel for the second respondent has submitted that the Tribunal has rightly considered the materials and evidence available on record and has awarded the just, fair and reasonable compensation and the same does not require any interference at the hands of this Court. Hence, he prays for dismissal of the appeal.

6. Heard the learned counsel for the appellants and the learned counsel for the second respondent and perused the materials available on record carefully and meticulously.

7. Before the Tribunal, three witnesses have been examined and marked as PW1 to PW3 and filed nine documents which were marked as Ex.P1 to Ex.P9. On the side of the Insurance Company, one witness was

examined as RW1 and three documents were marked as Ex.R1 to Ex.R3.

8. This is a claimants' appeal seeking enhancement of the compensation awarded by the Tribunal. Hence, this Court is not inclined to go into the findings of the Tribunal in respect of negligence as well as the liability of the respondents to pay compensation.

9. The details of the compensation awarded by the Tribunal are as follows:

HEADS	**AMOUNT (in Rs.)**
Loss of Dependency	5,20,000/-
Loss of Consortium	50,000/-
Loss of love and Affection	2,00,000/-
Funeral Expenses	25,000/-
TOTAL	**7,95,000/-**

10. The Tribunal has awarded a sum of Rs.5,20,000/- towards loss of dependency by fixing the monthly income of the deceased at Rs.5000/-, deducting 1/3rd of the amount towards personal expenses of the deceased and adopting the multiplier of 13. The Tribunal has taken the age of the

deceased as 47 years. Further, taking note of the earning capacity of the deceased and the economic situation prevailing at that time, the Tribunal fixed the monthly income of the deceased at Rs.5000/- for calculating the pecuniary loss on account of the death of the deceased.

11. It is claimed in the claim petition that the deceased was earning a sum of Rs.15,000/- per month running waste paper mart and iron shop. It is submitted by the learned counsel for the appellants / claimants that the Tribunal has not properly considered the evidences of P.W.1 and P.W.2 and the documents marked, while fixing the monthly income of the deceased at Rs.5000/-. It is also his specific submission that the Tribunal ought to have taken 25% for calculating the future prospects.

12. It is seen that the deceased was the entire caretaker of the family having five dependants. Taking note of the above submissions of the learned counsel for the appellants / claimants, economic situation prevailing at that time and also the facts and circumstances of the case, this Court is of

the considered view that the monthly income of the deceased has to be taken as Rs.8000/- instead of Rs.5000/- fixed by the Tribunal. There is no need to change the multiplier adopted by the Tribunal. Further, the deduction at 1/3 is modified as ¼ towards personal expenses of the deceased. If Rs.8,000/- is taken as the monthly income of the deceased, after adding 25% towards future prospectus of the deceased and 1/4th of the amount is deducted and the multiplier of 13 is adopted, the loss of dependency works out to Rs.11,70,000/- (8000 + 25% x ¼ x 12 x 13). Accordingly, the amount awarded by the Tribunal towards loss of dependency stands modified to Rs.11,70,000/-. Similarly, it would be appropriate to award a sum of Rs.40,000/- towards loss of consortium to the wife of the deceased, a sum of Rs.1,60,000/- towards loss of love and affection to the sons and daughters of the deceased (Rs.40,000/- x 4), a sum of Rs.15,000/- towards funeral expenses. The Tribunal has not awarded any amount under the head of loss of estate and hence a sum of Rs.15,000/- is awarded towards Loss of Estate.

13.The details of the modified compensation are as under:

HEADS	**AMOUNT (Rs.)**
Loss of dependency (8000 + 25% x ¼ x 12 x 13).	11,70,000/-
Loss of love and affection	1,60,000/-
Loss of consortium	40,000/-

Funeral expenses	15,000/-
Loss of estate	15,000/-
TOTAL...	**14,00,000/-**

14. In the result, the Civil Miscellaneous Appeal filed by the appellants is partly allowed by enhancing the total compensation from Rs.7,95,000/- to **Rs.14,00,000/-**, which is payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

15. The second respondent/Insurance Company shall deposit the enhanced compensation amount, as awarded by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the appellants/claimants through RTGS within a period of two weeks thereafter. No costs.

16. Since the compensation amount now awarded is Rs.14,00,000/-, it is made clear that the claimants have to pay the appropriate Court fee in order to receive the enhanced amount.

Index : Yes/No **13.03.2023**

Internet : Yes/No
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To

1.The Motor Accidents Claims Tribunal
III Additional District Judge,
Poonamallee.

2.The Section Officer,
VR Section,
Madras High Court.

A.A.NAKKIRAN.,J.

gv

C.M.A.No.2018 of 2018

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