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C.M.A.No.1907 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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- 1.Rose
 - 2.Minor Sivakumar
 - 3.Minor Sivaranjani
 - 4.Thoppalan
 - 5.Thailammal
- ... Appellants

(2nd and 3rd minor appellants are represented by their mother Rose as natural guardian and next friend)

Versus

- 1.Kalpana
 - 2.Divisional Manager,
The New India Assurance Company Limited,
CSI Building, 2nd Floor,
No.1, Officers Lane,
Near Orris College, Vellore.
- ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 18.09.2018 made in M.A.C.T.O.P.No.1240 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub-Court, Thiruvannamalai.



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For Appellants

: Ms.Sunithi Abirami
for Mr.M.Malar

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: Ms.C.Sangamithirai

JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation awarded by the Tribunal in M.A.C.T.O.P.No.1240 of 2017, dated 18.09.2018.

2.The claim petition was filed stating that on 18.05.2018, at about 02.00 a.m., when the deceased was travelling in a TVS XL moped from Pugaipatti Village to Kattusellur Village, the driver of the offending vehicle came in the same direction, dashed against the deceased from behind; that as a result, the deceased sustained fatal injuries and hence, the appellants are entitled to compensation of Rs.20,00,000/-.

3.The 1st respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The 2nd respondent/Insurance Company filed a counter denying all the averments made in the claim petition and stated that the deceased



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without noticing the offending vehicle viz., the car suddenly crossed the road and invited the accident; that the accident took place only due to the negligence of the deceased; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellants examined two witnesses and marked Ex.P.1 to Ex.P.6 on their side. The 2nd respondent has not examined any witness or marked any document.

6.The Tribunal after considering the oral and documentary evidence directed the 2nd respondent to pay a sum of Rs.13,13,792/- as compensation to the appellants.

7.The learned counsel for the appellants submitted that though the appellants filed Ex.P6-membership card issued to the deceased by the Superintendent, Tamil Nadu Construction Labourer's Welfare Board, which suggests that the deceased was a construction worker, the Tribunal had fixed a meagre notional income of Rs.6,500/- per month and prayed for enhancement of compensation.



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8.The learned counsel for the appellant further submitted that the 1st respondent remained *ex-parte* before the Tribunal and he prayed to dispense with notice to the 1st respondent and he has also made an endorsement to that effect. Hence, notice to the 1st respondent is dispensed with.

9.The learned counsel for the 2nd respondent further submitted that the notional income fixed by the Tribunal in the absence of any evidence is just and reasonable and no interference is called for. Further, the award of compensation under the heads loss of love and affection to the children and parents are excessive and prayed for dismissal of the appeal.

10.The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

11.On perusal of the records, it is seen that the appellants had established the avocation of the deceased by marking Ex.P6-membership card issued by the Superintendent, Tamil Nadu Construction Labourer's Welfare Board. In Ex.P6, the avocation of the deceased is shown as mason. However, the appellants had not proved the income of the



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deceased. The deceased was aged 42 years. Considering the age of the deceased, the fact that the deceased was working as mason and year of accident, this Court is of the view that it would be just and reasonable to fix a sum of Rs.15,000/- per month as notional income of the deceased. The appellants are entitled to 25% enhancement towards future prospects. After deducting 1/4th towards personal expenses, the compensation under the head loss of income has to be as follows:

$$\text{Rs.18750/- (Rs.15,000 + 25\%) X 14 X 12 X 3/4 = Rs.23,62,500/-}$$

Further, the award under the head loss of love and affection for the appellants 2 and 3 is reduced to Rs.80,000/- at the rate of Rs.40,000/- each. Similarly, the award under the head loss of love and affection for the appellants 4 and 5 is enhanced to Rs.80,000/- at the rate of Rs.40,000/- each. The amount awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	10,23,792	23,62,500	Enhanced
2.	Loss of consortium to the 1 st appellant	40,000	40,000	Confirmed
3.	Loss of Estate	15,000	15,000	Confirmed
4.	Funeral Expenses	15,000	15,000	Confirmed
5.	Loss of love and affection for the appellants 2 and 3	1,50,000	80,000	Reduced
6.	Loss of love and affection for the appellants 4 and 5	70,000	80,000	Enhanced
	Total	13,13,792	25,92,500	Enhanced by Rs.12,78,708/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,13,792/- is hereby enhanced to Rs.25,92,500/-, together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this



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Judgment. On such deposit, the appellants 1, 4 and 5 are permitted to withdraw their respective share from the award amount now determined by this Court, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount already withdrawn, if any. The share of the minor appellants 2 and 3 are directed to be deposited in any one of the nationalised bank in a fixed deposit till the minors attain majority. The 1st appellant - mother of the minor appellants 2 and 3 are directed to withdraw the accrued interest once in three months. The appellants are directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Motor Vehicle Accident Tribunal,
Special Sub-Court, Thiruvannamalai.

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



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SUNDER MOHAN, J.

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