IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No. 1185 of 2022

1. R.Ummath Salma
2. Minor R.Fizatabasum
3. Minor R.Mohammed Rehaan
   (Minors appellants represented by their next friend and mother R.Ummath Salma, Wife of late Razak)
4. I.Kavsar (died)

...Appellants

Vs.

1. Lalitha
2. M/s. The New India Assurance Co., Ltd.,
   No.10/19-A, Vetri Towers, 1st Floor,
   Salem Main Road, Attur - 636 102.

(The first respondent remain exparte before the Tribunal, hence notice may be dispensed with for the first respondent)

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 10.02.2022 made in M.C.O.P.No.1896 of 2019 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Salem.

For Appellants	: Mr.M.Guruprasad
For R2	: Mr.J.Chandran

JUDGMENT

The widow, two minor children and mother of the deceased Razak filed M.C.O.P.No.1896 of 2019 before the Motor Accidents Claims Tribunal, (Special District Judge), Salem, claiming a sum of Rs.75,00,000/- as compensation for the death of one Razak who died in the accident that took place on 31.01.2019.

2. According to the claimants, on 31.01.2019, when the deceased Razak was riding his Two Wheeler bearing Registration No.TN 30 AA 7948 near Mallur Vadakkadu pirivu in Salem to Namakkal road, the driver of the lorry bearing registration No.TN-33 AZ 8989 owned by the first respondent, drove the lorry in a rash and negligent manner, lost control, hit against a woman, who died on the spot and also hit the motorcycle of the deceased. Due to the impact, the said Razak sustained grievous injuries and was declared dead by the doctor of the Government Hospital, Salem, where he was taken for treatment. At the time of accident, the deceased was aged about 46 years, and earning Rs.50,000/- per month as a partner in A1-Qadir Payals Silver chain manufacturer. The deceased was said to be a hard working and enterprising person.

3. The first respondent, the owner of the offending vehicle remained ex-parte and the claim petition was contested by the second respondent/Insurance Company. The second respondent/Insurance Company filed a counter denying all the averments raised in the claim petition including negligence, liability and quantum.

4. Before the claims Tribunal, the first claimant examined herself as P.W.1., the eye-witness was examined as P.W.2. and one Bhuvaneswaran was examined as PW3 and marked Exs.P.1 to P.22 and Ex.X.1 to Ex.X4 were filed on behalf of the claimants. The respondents neither examined any witness nor marked any documents.

5. The Tribunal, based on the pleadings and the materials available on record held that the accident occurred due to the negligent driving of the driver of the lorry. The Tribunal assessed the total compensation at Rs.13,93,000/- with interest at 7.5% per annum from the date of petition and mulcted the liability on the second respondent / Insurance Company. Feeling aggrieved and being dissatisfied with the quantum awarded, the appellants/claimants have preferred this appeal seeking enhancement of compensation.

6. The learned counsel for the appellants submitted that the Tribunal erred in awarding a meagre sum of Rs.13,93,000/- as against the claim of Rs.75,00,000/- made by the appellants / claimants. The learned counsel submitted that the Tribunal erred in rejecting Ex.X2 to Ex.X4 which were filed in support of the deceased's income. The learned counsel submitted that as per Ex.X4/pay slip of the deceased, the deceased was earning Rs.24,500/- as a Marketing Executive in Kurinji Hospital, Salem. The learned counsel submitted that the Tribunal awarded Rs.25,000/- towards Funeral expenses and the same may be adjusted as Rs.15,000/- each towards loss of estate and Funeral expenses. The learned counsel submitted that, though the Tribunal dismissed the claim petition as against the fourth claimant, the share of the fourth claimant at Rs.2,00,000/- was deducted from the compensation amount and only balance sum was apportioned between the appellants 1 to 3. The counsel further submitted that in the light of the finding of the Tribunal that the fourth claimant died, without any other legal heirs except the deceased, the share of the fourth claimant ought to be given to the appellants 1 to 3. It is also submitted that the amounts awarded towards other heads were meagre and hence, the compensation awarded by the Tribunal needed to be interfered with in the appeal.

7. Per contra, the learned counsel for the second respondent/insurance company submitted that the Tribunal rightly rejected Ex.X2 to Ex.X4. According to the counsel, the pay slip could not be relied, as there was no PF deduction. The learned counsel submitted that the award of the Tribunal was just and reasonable and hence, the same deserved to be confirmed.

8. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent and perused the materials available on record.

9. The only point to be determined in the appeal is whether the compensation awarded is fair and reasonable.

10. The claimants produced Ex.X4, the salary certificate to prove the income of the deceased. It is the evidence of PW3 that the salary of the deceased was paid in cash. Further a perusal of Ex.X4 shows that no deduction towards EPF is made. I therefore find that the Tribunal was justified in rejecting Ex.X4. In the absence of any material evidence, the Tribunal fixed a sum of Rs.12,000/- per month as the notional income of the deceased. In my view the notional income

fixed at Rs.12,000/- p.m is on the lower side. The accident occurred in the year 2019, and therefore taking into consideration the cost escalation for the year 2019, I am of the view that a sum of Rs.15,000/-p.m towards notional income, would be fair. Taking into consideration the judgment of the Hon'ble Supreme Court, reported in ***2017 (2) TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi & others),*** this Court is of the view that the appellants are entitled to 25% towards future prospects and not 30% as fixed by the Tribunal. The multiplier of 13 adopted by the Tribunal is the appropriate multiplier for the age of the deceased. Thus, a sum of Rs.15,000/- is fixed as notional income per month, 25% of the amount is added towards future prospects and 1/3rd is deducted from the resultant amount and by adopting 13 multiplier, the loss of Income is arrived at Rs.19,50,000/- ([Rs.15,000 + 3750] x 12 x 13 x 1/3). Accordingly, the compensation awarded by the Tribunal towards loss of Income stands modified to Rs.19,50,000/-. The submission of the learned counsel for the appellant that the amount awarded towards funeral expenses at 25,000/- may be adjusted towards loss of estate and funeral expenses is accepted. The claimants shall be entitled to Rs.15,000/- each towards loss of estate and funeral expenses.

11. The award of the Tribunal towards other heads are confirmed.

12. Accordingly the award of the Tribunal is modified as follows:

S.No	***Various Heads***	***Awarded by the Tribunal***	***Awarded by this Court***
1.	Loss of Income	Rs.12,48,000	Rs.19,50,000
2.	Loss of Love and affection (20,000 x 4)	Rs.80,000	Rs.80,000
3.	Loss of consortium	Rs.40,000	Rs.40,000
4.	Funeral Expenses	Rs.25,000	Rs.15,000
5.	Life of Estate	----	Rs.15,000
	Total	Rs.13,93,000	Rs.21,00,000

13. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,93,000/- is hereby enhanced to Rs.21,00,000/- with interest at the rate of 7.5% per annum less interest for the delay period, if any. The second respondent/Insurance Company is directed to deposit the modified amount of compensation, as ordered above, along with interest and costs, after deducting the amount if any, already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. As the claim petition was dismissed against the fourth appellant as she died during the pendency of the proceedings, the enhanced compensation of Rs.21,00,000/- shall be apportioned as per the direction of the Tribunal to the appellants 1 to 3. On such deposit being made, the first appellant is permitted to withdraw her share on making proper application before the Tribunal. The share of

the minor appellants 2 & 3 shall continue to be in the Nationalised bank deposit as ordered by the Tribunal, till the minors attain majority. The interest accrued in respect of the minors, shall be withdrawn by the first appellant - mother once in three months directly from the bank, which shall be utilized for the benefit and welfare of the minors. The appeal is partly allowed. There shall be no order as to costs.

08.06.2023

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Speaking Order: Yes/No
Index: Yes/No
Neutral Citation: Yes/No

To

1.The Special District Judge,
(Motor Accident Claims Tribunal)
Salem.

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

N.MALA, J.

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