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C.M.A.No. 975 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.06.2023

Coram:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No. 975 of 2022

1. S. Seerangayee
2. Minor S. Hema Dharshini
3. Minor S. Subathra
4. Minor S. Kishore
5. Madhammal
6. T.Rangasamy

... Appellants

Versus

1. Sivapatham
2. S. Krishnaraj
3. United India Insurance Company Limited
Office No. 11/2, K. Complex First Floor
New Scheme Road, Pollachi,
Coimbatore District.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 14.10.2019 made in M.A.C.T. O.P. No. 38 of 2017 on the file of the Motor Vehicle Accidents Claims Tribunal, Subordinate Judge, Pollachi.

For Appellants	:	Mr.R. Nalliyappan
For RR 1&2	:	No Appearance
For R3	:	Ms.C. Harini
		for M/s. M.B. Gopalan Associates



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JUDGMENT

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This Civil Miscellaneous Appeal is filed by the Claimants against the award and decree dated 14.10.2019 made in M.A.C.T. O.P. No. 38 of 2017 on the file of the Motor Vehicle Accidents Claims Tribunal, Subordinate Judge, Pollachi.

2. The above appeal is filed by the Claimants seeking for enhancement of compensation. The wife of the deceased, minor daughters, son and the parents of the deceased, filed the claim petition seeking compensation for the death of one Senthil Kumar in a motor accident which occurred on 23.04.2016.

3. On 23.04.2016, at about 6.30 p.m. when the deceased along with his friends was riding pillion in the motor cycle bearing Registration No. TN-38-BA-9780, a lorry bearing Registration No. TN-56-Y-1617 belonging to the first respondent, driven by its driver in a rash and negligent manner came in the opposite direction and hit against the Hero Honda motorcycle, causing the death of Senthil Kumar.



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4. According to the Claimants, the deceased was aged about 32 years at the time of accident, was working as heavy vehicle driver and earning a sum of Rs.20,000/- per month. The Claimants, therefore, filed the claim petition seeking compensation of Rs.30,00,000/-.

5. Before the Claims Tribunal, the respondents 1 and 2 i.e., the driver and owner of the lorry remained ex-parte and the claim petition was contested by the third respondent/Insurance Company. The 3rd respondent/Insurance Company filed a detailed counter affidavit denying the negligence, liability and quantum of compensation.

6. Before the Claims Tribunal, the first Claimant examined herself as PW1 and one other witness was examined as PW2. On the side of the Claimants, Ex.P1 to Ex.P13 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

7. The Claims Tribunal, on an assessment of the entire evidence on record, awarded a sum of Rs.13,85,400/- as compensation along with 7.5% interest. Aggrieved by the quantum of compensation awarded by the



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Claims Tribunal, the Claimants have filed the above appeal for enhancement of compensation.

8. The learned counsel for the appellants submitted that the deceased was aged about 32 years at the time of accident and as a heavy vehicle driver was earning a sum of Rs.20,000/-p.m. According to the Claimants, the Tribunal erred in assessing the notional income of the deceased at Rs.6,500/- p.m. Only.

9. The learned counsel for the respondents, on the other hand, submitted that the award of the Tribunal was just, fair and reasonable and did not call for any interference.

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

11. On a perusal of Ex.P10, it is clear that the deceased was a heavy vehicle driver and therefore, the fixation of Rs.6,500/- p.m. as notional income of the deceased by the Claims Tribunal is unjustified. It



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is seen that the deceased was maintaining family of six members.

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Considering the cost of living for the year 2016 and the large family of the deceased, I am of the view that the notional income can be fixed at Rs.12,000/- p.m., as claimed by the Claimants. The Claims Tribunal awarded a sum of Rs.40,000/- towards "Loss of Consortium" to the first Claimant and Rs.15,000/- towards "Loss of Love and Affection" for all the other Claimants. In my view the said awards are against the judgment of the Hon'ble Supreme Court in *Pranay Sethi* case. Hence, the first Claimant would be entitled to a sum of Rs.40,000/- towards "Loss of Consortium" and each of the Claimants 2 to 6 shall be entitled to Rs.40,000/- towards "Loss of Love and Affection". It is further seen that the Tribunal awarded a sum of Rs.5,000/- towards "Transportation charges" and has not awarded any amount towards "Loss of Estate". I am of the view that the Claimants shall be entitled to Rs.15,000/- towards "Loss of Estate" by deleting Rs.5,000/- awarded by the Tribunal under the head of "Transportation charges".



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12. In view of the above discussion, the award of the Tribunal is modified as follows:

<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal (Rs.)</i>	<i>Award of this Court (Rs.)</i>
1.	Loss of Dependents	13,10,400	24,19,200
2.	Loss of Consortium	40,000	40,000
3.	Loss of Love and Affection	15,000	2,00,000
4.	Funeral Expenses	15,000	15,000
5.	Loss of Estate	5,000	15,000
Total		13,85,400	26,89,200

$$= [\text{Rs.}12,000 \times 40/100 = \text{Rs.}4800.]$$

$$= \text{Rs.}12,000 + \text{Rs.}4,800 = \text{Rs.}16800 - 1/4 = \text{Rs.}12600 \text{ Notional Income}$$

$$= \text{Rs.}12600 \times 12 \times 16 = \text{Rs.}24,19,200].$$

13. It is submitted by the learned counsel for the 3rd respondent/Insurance Company that it has already deposited the award amount along with interest before the Tribunal.

14. In view of the above, the 3rd respondent/Insurance Company is directed to deposit the enhanced compensation of Rs.13,03,800 along with 7.5% interest within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the appellants 1, 5 and 6



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shall be entitled to withdraw their share amount by making appropriate application before the Tribunal. The share of the appellants 2 to 4 shall be deposited in a cumulative deposit in any of the Nationalized Bank, till they attain majority. The apportionment of compensation shall be as per the ratio fixed by the Claims Tribunal.

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

08.06.2023

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

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal, Pollachi.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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N.MALA.J.,

msm

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