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C.M.A.Nos.1822 & 1823 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal Nos.1822 and 1823 of 2021

C.M.A.No.1822 of 2021

Raghul

.. Appellant

Versus

1. Suresh

2. Ravichandran

3. The Divisional Manager,
Divisional Office,
United India Insurance Co., Ltd.,
Mettur Road, Erode – 638 011.

.. Respondents

*[Respondents – 1 & 2 remained ex-parte before the tribunal,
hence notice may be dispensed with for R-1 & R2 in this Appeal]*

C.M.A.No.1823 of 2021

1. Sheela

2. Ramesh

.. Appellants

Versus

1. Suresh

2. Ravichandran

3. The Divisional Manager,



C.M.A.Nos.1822 & 1823 of 2021

Divisional Office,
United India Insurance Co., Ltd.,
Mettur Road, Erode – 638 011

.. Respondents

*[Respondents – 1 & 2 remained ex-parte before the tribunal,
hence notice may be dispensed with for R-1 & R2 in this Appeal]*

C.M.A. No. 1822 of 2021:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 for enhancement of the compensation awarded in the judgment and decree dated 20.11.2020 made in MCOP No.534/2017 on the file of MACT/Spl. District Court at Erode.

C.M.A. No. 1823 of 2021:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 for enhancement of the compensation awarded in the judgment and decree dated 20.11.2020 made in MCOP No.524/2017 on the file of MACT/Spl. District Court at Erode.

For Appellant	:	Mr.Ma.P.Thangavel in both the appeals
For Respondents		
[R1 & R2]	:	Set Ex-Parte
[R3]	:	Ms. I. Malar. in both the appeals

COMMON JUDGMENT

Both the Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicle Act, 1988, praying to enhance the compensation awarded by the Motor Accident Claims Tribunal/Special District Court, Erode in the award dated 20.11.2020 made in MCOP Nos.524 and 534 of 2017.



2. The case of the claimants is as follows:

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(I). On 03.05.2017 at about 08:05 am, the deceased Srivarsau was travelling along with his brother Raghul (claimant in M.C.O.P. No. 534 of 2017) in a two wheeler bearing Registration No. TN 66 L 774 from Bhavani to Erode in the main road. While they were reaching a place near Sri Bharani Finance, Kalingarayanpalayam, a Bolero pick-up goods vehicle bearing Reg. No. TN 56 J 7782 came in the opposite direction in a very high speed and hit the two wheeler, which resulted in causing multiple injuries to both the rider and the pillion rider. Subsequently, the Pillion rider Srivarsau died on 05.05.2017.

(II). For the death of Srivarsau, his parents have filed M.C.O.P. No. 524 of 2017 claiming compensation of Rs.12,00,000/-. Similarly, the injured claimant Raghul filed M.C.O.P. No. 534 of 2017 claiming compensation of Rs.15,00,000/-. Both the claim petitions have been filed under Section 166 of the Motor Vehicles Act.

(III) The claim petitions have been jointly tried and common evidence was recorded by the Tribunal in MCOP.No.534/2017. The driver and the owner of Bolero Van remained *ex-parte* and the Insurance Company alone contested the claim petitions.

(IV) The Tribunal, based on the evidence on record, held in point No.1



that the driver of the Bolero Pick-up van is responsible for the accident, which resulted in causing death of the deceased as well as the injuries to the claimant Raghul.

(V). In point No.2, the Tribunal quantified the compensation for the death of deceased Srivarsau and awarded Rs.12,00,000/-.

(VI). The Tribunal quantified the compensation payable to the injured/claimant and awarded a sum of Rs.8,80,928/-.

(VII) Not being satisfied with the Award, the claimants have come forward with these appeals, seeking enhancement. The Insurance Company has not filed any appeal challenging the Award.

3. The learned counsel for the claimants/appellants in CMA No. 1823 of 2021 (MCOP No. 524 of 2017) submitted that the notional income fixed by the Tribunal is improper. Even though evidence was adduced to the effect that the deceased was a hotel server and was earning a sum of Rs.20,000/- per month in Punjabi Hotel, Thindal, Erode, the Tribunal has fixed only a sum of Rs.10,000/-, which is on the lower side. The Tribunal also did not take note of the fact that at the time of accident the deceased was only 19 years and had he been alive, he would have supported the claimants/parents, financially. The Tribunal on the other hand had concluded that the income of the deceased



would be Rs.800/- per day ignoring the fact that during the year 2017, no labour could be available for such a meager wage. The Tribunal also failed to award future prospects for the deceased especially when he died at the age of 19 years. Accordingly, the learned counsel for the appellant prayed this Court to enhance the compensation amount in MCOP No. 524 of 2017 in favour of the parents of the deceased.

4. Similarly, it was contended by the counsel for the appellant in CMA No. 1822 of 2021 (MCOP No. 534 of 2017) that the injured Raghul was 21 years at the time of accident and due to the injuries sustained, he lost his earning prospects substantially. As per the Wound Certificate, Ex.P3, the claimant suffered as many as 10 grievous injuries. It was clearly brought out under Ex.P14 that the claimant suffered frontal bone depressed fracture, diffuse cerebral edema, Type 1 open fracture in both left fore arm. However, the Tribunal, based on the opinion given by the Medical Board that the claimant suffered 10% disability adopted it without any independent evaluation of the injuries suffered. The Tribunal has simply brushed aside the evidence let in to show that the claimant had underwent surgery in his left hand during which plates and screws were implanted. At the time of accident, the claimant was working as an Milk Packing Operator in Aauin, Chithode, Erode and earned



Rs.20,000/- per month. However, the Tribunal fixed only notional income of Rs.10,000/- which is on the lower side. The Tribunal also did not take note of the fact that the injuries suffered by the claimant had dented his prospects to earn. Therefore, the learned counsel for the appellant prayed for enhancing the compensation awarded by the Tribunal.

5. *Per-contra*, the learned counsel appearing for the Insurance Company vehemently opposed for enhancement of compensation and submitted that the compensation already awarded under various heads by the Tribunal are on the higher side and therefore, no further enhancement is required and prayed for dismissal of the appeals.

6. Heard the learned counsel for the appellants as well as the learned counsel for the Insurance Company and perused all the available materials on record.

7. The deceased in MCOP No.524 of 2017 namely, Srivarsau was working as a Hotel Server. The deceased was aged 19 years at the time of accident. However, before the Tribunal, the claimants did not produce any evidence to prove his monthly income. The Tribunal considered the age of the deceased and other aspects has notionally fixed the income of the deceased @



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Rs.10,000/- per month. A Division Bench of this court in the case of

V.Rathika Vs. P.Anbazhagan and Ors. in C.MA. No.2421 of 2018 dated 02.08.2019 has fixed the notional income of the manual worker, considering the age and year of accident, at Rs.15,000/- per month. Applying the ratio laid down by the Division Bench of this Court, the notional income of the deceased, by taking note of his and the year of the accident, can be fixed at Rs.14,000/- and it would be proper. The applicable multiplier is 18 corresponding to the age of the deceased. Accordingly, the compensation under the head loss of Income of the deceased is summarised as follows:-

$[14000 + 5600 (40\% \text{ of } 14000) = 19600 \times 12 \times 18 \times 1/2 = \text{Rs.}21,16,800/-]$

8. That apart, the claimants, being parents of the deceased, who have lost their son at a very young age, are entitled for compensation under the head loss of consortium of Rs.40,000/- each i.e., total Rs.80,000/-

9. Since the compensation hereby awarded for the death of the deceased under the head loss of earning capacity and the case is treated as fatal case, awarding compensation under the head pain and sufferings is not proper and the medical expenses awarded by the Tribunal is hereby confirmed.



10. Before the Tribunal, the claimants have restricted the total compensation at Rs. 12,00,000/-. The Tribunal, carried away by the restricted compensation amount, awarded Rs.12 lakhs in favour of the claimants. The Apex Court in the case of **Joginder Singh & Anr Vs. ICICI Lombard General Insurance Company** Civil Appeal No.6291 of 2019 (Arising out of SLP (civil) No.34239 of 2015) and Division Bench of this Court in **United India Insurance Co. Ltd., Divisional Office-1, 2nd Floor, 104-A, Peramanur Main Road, Salem – 7 Vs. T.P.Anies and 2 Ors**, [2020 (1) TN MAC 205 (DB)] has held that while deciding the quantum of “Just Compensation”, even though the claimants have restricted their claim, if they are entitled for more compensation, then it is the duty of the Tribunal to award appropriate compensation in terms of Section 166 of the Motor Vehicles Act. Accordingly the claimants are entitled to compensation over and above the one claimed by them before the Tribunal.

11. In effect, the compensation payable to the claimants in MCOP No.524 of 2017 (corresponding to CMA No.1823 of 2021) who are the parents of the deceased, is re-determined as under:-

S. No.	Various Heads	Awarded by Claims Tribunal	Awarded by this Court
1.	Loss of Dependency	Rs.15,12,000/-	Rs.21,16,800/-



S. No.	<i>Various Heads</i>	<i>Awarded by Claims Tribunal</i>	<i>Awarded by this Court</i>
2.	Loss of Estate	Rs.15,000/-	Rs.15,000/-
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
4.	Loss of Filial Consortium	Rs.80,000/-	Rs.80,000/-
5.	Medical Expenses	Rs.24,273/-	Rs.24,273/-
6.	Pain and Suffering	Rs.40,000/-	-NA-
	Total	Rs.16,86,273/- [Restricted to Rs.12,00,000/-]	Rs.22,51,073/-

12. As far as the compensation awarded to the injured is concerned, the Tribunal, in the opinion of this Court, has considered the evidence made available on record and awarded a just and fair compensation befitting the nature of injuries suffered by the claimant. In fact, the claimant was referred to Medical Board and the Board had assessed the disability of the claimant at 10%. The Tribunal has referred to the assessment of the Medical Board and awarded compensation under various heads taking note of the evidence made available. Thus, the sum of Rs.8,80,928/- awarded by the Tribunal in favour of the Claimant in MCOP No.534 of 2017 corresponding to CMA No.1822 of 2021, does not call for any interference by this Court.

13. In the result,

(i) the award dated 20.11.2020 made in MCOP No.524 of 2017



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corresponding to Civil Miscellaneous Appeal No.1823 of 2021 stands modified as mentioned above. The Civil Miscellaneous Appeal No.1823 of 2021 is partly allowed and the compensation awarded by the Tribunal at Rs.12,00,000/- is hereby enhanced to **Rs.22,51,073/- [Rupees Twenty Two Lakhs Fifty One Thousand Seventy Three only]** together along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The Third Respondent-Insurance Company is directed to deposit the enhanced amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this judgment to the credit of MCOP No.524 of 2017 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Erode. On such deposit, the appellants/claimants are permitted to withdraw the enhanced compensation amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, in equal proportion. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary court fee, if any, on the enhanced compensation.



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(ii) Consequently, the award dated 20.11.2020 passed in MCOP

No.534 of 2017 is confirmed and CMA No.1822 of 2021 is dismissed.

(iii) There shall be no order as to costs in the present appeals.

28.11.2023

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Index : Yes/No

Speaking : Yes/No

Neutral Citation Case : Yes/No

To:

1.The Special District Judge,
Motor Accidents Claims Tribunal,
Erode.

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

K.RAJASEKAR,J.,

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