IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.03.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.595 of 2018

1. Vasanthi
2. Logesh Babu
3.Shalini ...Appellants

Vs

1.M/s.Parveen Travels
No.115/6, Santhavellore Village,
Sunguvachatram
(R1 remained exparte and hence, his presence may be dispensed with)

2.The New India Assurance Company Limited,
No.92, GN Chetty Road,
Chennai – 600 017. ..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in MACTOP.No.460 of 2013 dated 24.03.2015 on the file of Motor Accident Claims Tribunal (II Additional District Judge, Poonamallee).

For Appellants : Ms.A.Subadra
for M/s.M.Malar

For Respondents :Ex parte - R1
Mrs.C.Bhuvanasundari for R2

JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 24.03.2015 passed by the Motor Accident Claims Tribunal (II Additional District Judge, Poonamallee) in MACTOP.No.460 of 2013.

2. On 15.03.2013 at 21.45 hours, while the deceased R.Mohan was waiting to cross the Trunk Road, Poonamallee, near Government Hospital, the first respondent private bus bearing Regn.No.TN-21-AE-4806, came from West to East direction, driven by its driver, in a rash and negligent manner, hit the deceased, due to which, the deceased sustained multiple and grievous head injury and died on the spot. Claiming that the deceased was lorry tank Fabrication contractor and earning about Rs.12,000/- per month and the driver of the lorry is solely responsible for the accident, the appellants / claimants have filed a claim petition claiming a sum of Rs.18,00,000/- .

3. The appellants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.

4. The details of the compensation awarded by the Tribunal under the

impugned award are as follows:

Heads	*Award Amount (Rs.)*
Loss of Income (7500 x1/3 x12 x15)	9,00,000/-
Funeral Expenses	10,000/-
Transportation	5,000/-
Loss of love & Affection to the children	10,000/-
Loss of Consortium	10,000/-
Damages to clothes	1,000/-
Total	**9,36,000/-**

5. Before the Tribunal, the Appellants/claimants examined two witnesses as PW1 and PW2 and filed six documents which were marked as Ex.P1 to Ex.P6. On the side of the second respondent, neither witness was examined nor document filed.

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

7. The learned counsel appearing for the Appellants/Claimants

submitted that the Tribunal has completely ignored the valid evidence given by the appellants. It has failed to consider the income and occupation of the deceased. It has failed to consider that the deceased was working as a lorry tanker builder earning Rs.12000/- per month and fixed his income as Rs.7500/- per month which is on the lower side. It ought to fix future prospects following the Apex Court principles. It ought to award reasonable amount under the head of mental agony and also more compensation under the head of funeral expenses, love and affection and transport expenses. The Tribunal, without appreciating the evidences properly, has awarded the total compensation of Rs.9,36,000/- and the said quantum is unreasonable. It has erred in awarding Rs.5,000/- towards transportation, Rs.10,000/- towards loss of love and affection to the petitioners 2 and 3; Rs.10,000/- towards loss of consortium; and Rs.10,000/- towards funeral expenses and the same are very meagre. Hence, he prayed to enhance the compensation.

8. Per contra, the learned counsel appearing for the second respondent submitted that the compensation claimed by the appellants is highly excessive and baseless. He further submitted that the Tribunal after analysing the evidences on record, has rightly awarded the compensation to

the appellants/claimants and hence, the award passed by the Tribunal does not warrant any interference by this Court. Hence, he prays for dismissal of the appeal.

9. Considering the age and earning capacity of the deceased, the Tribunal fixed the monthly income of the deceased at Rs.7500/- per month, deducting 1/3 of the income towards personal expenses of the deceased, adopting the multiplier of 15 (7500 x1/3=2500, 7500 – 2500 = 5000, 5000 x12 = 60000), calculated the pecuniary loss of income on account of the death of the deceased and has arrived at a sum of Rs.9,00,000/-(60000 x 15). The Tribunal has relied upon Ex.P1/FIR, Ex.P2/Death Certificate, Ex.P3/Insurance Policy, the Tribunal has taken the age of the deceased as 45 years.

10. On perusal of records it is seen that the Tribunal has not properly considered the evidences properly and the documents marked. Considering the age of the deceased and that the deceased was the entire caretaker of the family and economic situation prevailing at the present time and also the facts and circumstances of the case, this Court is of the considered view

that Rs.8500/- is to be taken as monthly income of the deceased. Since the age of the deceased was 45 years at the time of accident, there is need to change the multiplier as 14. Further, considering and age and earning capacity, 25% should be added towards future prospectus and 1/3 has to be deducted towards personal expenses for calculating loss of income. If Rs.8500/- is taken as the monthly income of the deceased, after adding 25% towards future prospectus of the deceased and 1/3 of the amount is deducted towards personal expenses and the multiplier of 14 is adopted, the loss of income works out to Rs.13,32,744/- **,** (8500 x 25 % = 3400) (8500 + 3400= 11900 x 1/3 =3967, 1900 – 3967 = 7933 x 12 = Rs.95,196/- x14 =13,32,744/-)Accordingly, the amount awarded by the Tribunal towards 'loss of income' stands enhanced to Rs.13,32,744/-. Similarly, it would be appropriate to enhance the award under the head of loss of love and affection to petitioners 2 and 3 to Rs.40,000/- each which would come to Rs.80,000/-, and also Rs.15000/- towards funeral expenses and Rs.40000/- towards loss of consortium to wife. On perusal of records, it is seen that no amount is awarded under the head of loss of estate for which they are entitled to. Hence, this court is inclined to grant a sum of Rs.15000/- towards loss of estate. The award amount of Rs.5,000/- granted under the head of Transport expenses and Rs.1,000/- towards damages to clothes are reasonable and hence they are confirmed as such.

11.The details of the enhanced compensation are as under:

Heads	***Award Amount (Rs.)***
Loss of Income	13,32,744/-
Funeral Expenses	15,000/-
Transportation	5,000/-
Loss of love & Affection to the children	80,000/-
Loss of Consortium	40,000/-
Loss of estate	15,000/-
Damages to clothes	1,000/-
Total	**14,88,744/-**

Rounded off to **Rs.14,88,750/-**

12. Thus, the appellants/claimants are entitled to the enhanced compensation of Rs.14,88,750/-. It is made clear that for the enhanced amount of Rs.5,52,750/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. It is made clear that the interest on the

award amount is waived off for the period of delay of 536 days.

13.The Civil Miscellaneous Appeal is partly allowed. No costs.

14. The second respondent/Insurance Company is directed to deposit the enhanced compensation as ordered above, less the amount if any already deposited, 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 to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter. No costs.

15. Since the compensation amount now awarded is Rs.14,88,750/-, it is made clear that the claimants have to pay the appropriate Court fee in order to receive the enhanced award amount.

Index : Yes/No **21.03.2023**
Internet : Yes/No
gv

To

1.The Motor Accident Claims Tribunal/
II Additional District Judge, Poonamallee

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

A.A.NAKKIRAN.,J.
gv

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A.A. NAKKIRAN, J.

This matter is listed today under the caption "For being mentioned".

2. The learned counsel for both parties submitted that this Court by order dated 21.03.2023, has wrongly arrived at Rs.3,400/- towards 25% Future prospects on the income of the deceased instead of Rs.2,125/-.

3.As prayed for by the learned counsel for both parties, loss of income of the deceased works out to Rs.11,89,944/- instead of Rs.13,32,744/- since 25% future prospects arrives at only Rs.2,125/- on the income of the deceased. (8500 x 25% =2125/-) not Rs.3,400/-. Hence, the calculation on loss of income of the deceased is arrived at Rs.11,89,944/- (Rs.8,500/- +25%=2125/-) (8500+2125=10625/-) - (10625 x 1/3rd= 3541/-) (10625-3541=7083/-) (7083 x 12=85,996/-) 85996 x 14=11,89,944/-) All other heads shall remain intact.

A.A. NAKKIRAN, J.

Lbm

4. Accordingly, the Registry is directed to issue fresh order copy after carrying out the aforesaid modification.

10.07.2023

Lbm

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