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C.M.A. No. 1910 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1910 of 2021

1. Narpavi
 2. Minor. Rishwanth
 3. Aboorvakani
- ... Appellants / Petitioners

Vs.

1. Shanmugam
 2. The Manager,
The Oriental Insurance Co. Ltd.,
2nd Floor, Dwarkanath Building,
Venkatesapuram, Perambalur.
- ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 07.04.2021 made in M.C.O.P. No. 494 of 2019, on the file of the Principal District Judge, Motor Accident Claims Tribunal, Perambalur.

For Appellants	:	Mr. S.P. Yuaraj
For R1	:	No Appearance
For R2	:	M/s. Sri Vidhya



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No. 494 of 2019, dated 07.04.2021 on the file of the Principal District Judge, Motor Accident Claims Tribunal, Perambalur.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. On 16.04.2019, at about 12:45 PM, the deceased Murugananth was riding a Yamaha R15 two wheeler bearing Registration No.TN-72-BY-0025 on the Ramanathan to Virudhachalam main road, while he reached Kudikadu Kaikatti near Sri Shamila Welding Workshop, a lorry bearing Registration No.TN-28-BD-4863, driven by its driver in a rash and negligent manner, hit on the two wheeler of the deceased, causing grievous injuries and succumbed to injuries on the same day in the Government Hospital, Thittakudi. A criminal case was registered against the driver of the first respondent's lorry in Cr.No.30/2019, U/s.279, 304(A) of IPC on the



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file of the Avinankudi Police Station. For the loss of the deceased Murugananth, the claimant, who are the wife, minor child and mother of the deceased have filed claim petition seeking compensation for a sum of Rs.50,00,000/-.

4. The first respondent is the owner of the lorry has not contested the claim and remained ex-parte. The second respondent - insurance company, who is the insurer of the said lorry has filed a counter and contended that the accident was taken place only due to the rash and negligence on the part of the deceased, who rode the two wheeler in a zig zag manner and invited the accident. The insurance company further contended that the driver of the first respondent's lorry has not possessed valid driving licence at the time of occurrence and disputed the age, income and occupation of the deceased.

5. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.11 were marked. On the side of the respondents, no witnesses were examined and no exhibits were marked.



6. Based on the evidence placed on record, the Tribunal in point nos.1 and 2, has held that the rash and negligence on the part of the driver of the first respondent's lorry is responsible for the accident and fixed the liability on the second respondent - insurance company to indemnify the first respondent and to pay compensation to the claimants. In point no.3, the Tribunal has quantified and granted compensation for a sum of Rs.18,62,000/- along with interest @ 7.5% per annum from the date of filing of claim petition till the date of realization.

7. Aggrieved over the award, the claimants have come forward with this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimants submitted that the Tribunal has not properly appreciated the evidence placed on record regarding the employment, monthly earnings of the deceased, fixed Rs.10,000/- as notional monthly income and awarded compensation. The Tribunal has also not awarded compensation under the head loss of consortium and also the compensation awarded under other heads are on the lower side, hence prays to enhance and award just compensation under



various other heads.

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9. Per contra, the learned counsel appearing for the respondent – insurance company has submitted that based on the evidences placed on record, the Tribunal has rightly fixed the notional income of the deceased and also awarded just compensation, hence prays to confirm the award of the Tribunal.

10. I have considered the submissions made on both sides and perused the materials available on record. The major contention raised by the learned counsel appearing for the claimants is with regard to the notional monthly income fixed on the deceased and quantum of compensation awarded by the Tribunal.

11. The claimants claim that the deceased was working as Sweet Master in the Dhanalakshmi Sweet Bakery at Ramantham, Cuddalore District and earning an income of Rs.30,000/- per month. To prove the income, P.W.3 - employer of the deceased deposed that the deceased was working as Sweet Master from February 2018 to April 2019 and was getting



Rs.24,000/- per month and by attending special orders, the deceased being paid Rs.2,000/- per order. The P.W.3 has marked Ex.P.9 to Ex.P.11 - Salary Certificate, Visiting card and Licence of the Bakery, respectively. In the cross examination, he has stated that he has got licence for preparing bread and not for preparing sweets. After analyzing the evidence of P.W.1 and P.W.3, the Tribunal has not accepted the claim of income and fixed the notional income of the deceased as Rs.10,000/- per month. This Court is of the view that the notional income fixed by the Tribunal is on the lower side, considering the age of the deceased and cost of inflation prevails on the date of occurrence, this Court is inclined to modify the same to **Rs.13,500/-** per month.

12. The Tribunal has rightly followed the dictum as laid down in *National Insurance Co. Ltd., vs. Pranay Sethi and other* reported in *[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]* and fixed 40% as future prospectus and as per *Sarla Verma and others Vs. Delhi Transport Corporation and others* reported in *[2009 ACJ 1298 SC : 2009 (6) SCC 121]*, the multiplier is fixed as '16' by considering the age of the deceased at the time of the accident. The Ex.P.5 - driving licence of the deceased, shows



that the deceased is aged about 31 years at the time of accident, hence, this Court finds no infirmity in the above fixing of future prospectus and multiplier adopted by the Tribunal. Since the dependents are three in numbers, deduction of one-third ($1/3$) is made from his monthly income towards his personal and living expenses, hence the compensation under loss of dependency with modified monthly notional income of Rs.13,500/- is assessed as follows:

Annual income (Rs.13,500/- x 12)	= Rs.1,62,000/-
Future prospects @ 40%	= Rs.64,800/-
Yearly income of the deceased	= Rs.2,26,800/-
Yearly contribution to his family (deduction of $1/3$)	= Rs.1,51,200/-
Applicable Multiplier	= 16
Total compensation (Rs.1,51,200 x 16)	= Rs.24,19,200/-

13. The Tribunal has awarded Rs.40,000/- as compensation under the head loss of consortium and as per the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs Nanu Ram [2018 ACJ 2018]***, all the claimants herein are entitled for consortium. Hence, this Court is inclined to grant the Rs.40,000/- each to the wife, minor child and mother of the deceased Muruganandh. Whereas the other heads are concerned, the



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compensation awarded by the Tribunal are just and the same are hereby confirmed.

14. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	17,92,000/-	24,19,200/-	Enhanced
2.	Consortium	40,000/-	1,20,000/-	Enhanced
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total Compensation	18,62,000/-	25,69,200/-	Enhanced

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,62,000/- is hereby enhanced to **Rs.25,69,200/-[Rupees Twenty Five Lakh Sixty Nine Thousand and Two Hundred only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded by this Court



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along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P. No.494 of 2019 on the file of the Principal District Judge, Motor Accidents Claims Tribunal, Perambalur. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. As far as minor claimant is concerned, the award amount to the minor claimant shall be deposited in the name of the minor claimant in any one of the Nationalized Bank in Fixed Deposit under the guardianship of his mother/ 1st appellant herein, till he attains the majority, and the 1st appellant herein is also permitted to withdraw the accrued interest, every six months for the welfare of the minor claimant, if he already attained the age of majority, his share amount may be dispersed. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.



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Index: Yes/No

K. RAJASEKAR, J.

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To:

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Perambalur.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

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