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C.M.A.No.919 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.919 of 2018

1.S.Muruganantham

2.M.Amirthavalli

3.M.Anitha

4.M.Premkumar (Minor)

.. Appellants

[Minor rep. by his father and
natural guardian of 1st petitioner
herein]

Vs.

1.Hemadeeswaran

2.ICICI Lombard General Ins. Co. Ltd.,
No.84/85, Wall Tax Road,
Arihant Plaza, Chennai – 600 003.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act against the judgment and decree dated 08.12.2017 made in MACT O.P.No.4337 of 2016 on the file of the Motor Accident Claims Tribunal, (Court of Small Causes), Chennai.



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For Appellants : Mr.Selvam
for Mr.K.Suryanarayanan
For Respondents
For R1 : No such person
For R2 : Mrs.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal arises against the award passed by the Motor Accident Claims Tribunal, (Court of Small Causes), Chennai, in M.C.O.P.No.4337 of 2016 dated 08.12.2017.

2. The claim petitioners are the appellants herein filed the above appeal seeking enhancement of compensation. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. The factum of the accident, manner of the accident, rash and negligent driving of the 1st respondent vehicle insured with 2nd respondent vehicle are not in dispute in this appeal. Hence, the finding rendered by the Tribunal in this regard are hereby confirmed.



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4. It is the case of the appellants / claimants that on 13.03.2016 at about 12.15 hours, when M.Sureshkumar (since deceased) was travelling as a pillion rider of motorcycle bearing Regn.No.TN-11-H-3376 in Puzhal Bye-pass, Maduravoyal road, at that time, the rider of the said motorcycle drove the vehicle in a rash and negligent manner, endangering public safety and lost control and capsized. Hence, the accident occurred, as a result of which, the deceased sustained fatal injuries and later died in the Hospital on 15.04.2016. Hence, the claim petition.

5. Before the Tribunal, on behalf of the claimants, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P21 were marked and on the side of the Respondents no one was examined and Ex.R1 was marked.

6. On appreciation of materials before it, the Tribunal awarded compensation as follows:

(a) Loss of dependency	:	Rs. 24,30,000/- (11,250/-x12x18)
(b) Funeral expenses	:	Rs. 15,000/-

		Rs. 24,45,000/-



The said sum was directed to be paid by the 2nd respondent along with interest at 9% per annum from the date of petition till the date payable by the 2nd respondent on behalf of the 1st respondent.

7. The learned counsel for the appellants submitted that the Tribunal failed to consider that the deceased was the only son and a 1st year M.E student and awarded inadequate compensation. The Tribunal erred in fixing the monthly income of the deceased at Rs.10,000/- per month when two co-ordinate Benches of this Court fixed the income of the final year Engineering student at Rs.20,000/- per month. The Tribunal erred in arriving at deduction towards personal expenses. The Tribunal ought to have fixed the income of the deceased at Rs.20,000/- per month and added 50% towards future prospects at 50%. The learned Tribunal completely omitted to award Medical expenses of Rs.11,49,751/- being the amount incurred at Sundaram Medical Foundation, Chennai, towards treatment as deposed by P.W.3, the doctor from the hospital. The Tribunal failed to award any compensation towards pain and suffering during the period of treatment. Hence, the compensation awarded by the Tribunal may be enhanced.



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8. The learned counsel for the 2nd respondent, on the other hand, submitted that the compensation awarded by the Tribunal is highly excessive. Hence, she prays for fair and reasonable compensation.

9. Heard the learned counsel appearing for the parties and perused the records.

10. On consideration of both oral and documentary evidence, the Tribunal awarded Rs.24,30,000/- (Salary Rs.10,000/- per month, 50% future prospects added = Rs.15,000/- and 1/4 of the income deducted as personal expense of the deceased = Rs.11,250/- and hence, Rs.11,250/- x12x18) towards of loss of dependency, since the deceased is a Post Graduate in Engineering and hence, this Court is inclined to fix the income of the deceased at Rs.20,000/-. The Tribunal fixed the future prospects of the deceased at 50% which appears to be higher side and hence, this Court is inclined to reduce to 40%. Accordingly, Rs.30,24,000/- (Rs.20,000/- x40/100=Rs.8,000/-, Rs.20,000/- + Rs.8000/- = Rs.28,000/-, Rs.28,000/-



x1/2=14,000/-, Rs.14,000/-x12x18=Rs.30,24,000/-) is awarded towards loss of dependency. Though the Tribunal has not awarded any compensation towards medical expenses, loss of love and affection and loss of estate, on perusal of Ex.P7 and Ex.P8, this Court is inclined to award Rs.6,60,000/- towards medical expenses and considering the facts and circumstances, Rs.80,000/- is awarded towards love and affection and Rs.15,000/- is awarded towards loss of estate. The Tribunal awarded Rs.15,000/- towards funeral expenses which appears to be just and reasonable and the same is hereby confirmed. The Tribunal awarded the compensation with interest at the rate of 9% per annum which is also appears to be higher side and hence, this Court is inclined to fix the interest at 7.5%.

11. In the light of the said discussions, the enhanced award is as follows:

<i>Sl.Nos.</i>	<i>Heads</i>	<i>Compensation</i>
1.	Loss of dependency	Rs.30,24,000/-
2.	Medical expenses	Rs.6,60,000/-
3.	Love and affection	Rs.80,000/-
4.	Loss of estate	Rs.15,000/-
5.	Funeral expenses	Rs.15,000/-
<i>Total</i>		Rs.37,94,000/-

Accordingly, the amount awarded by the Tribunal is enhanced from



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Rs.24,45,000/- to Rs.37,94,000/-/- together with interest at 7.5% per annum from the date of petition till the date of deposit of compensation.

12. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the compensation from Rs.24,45,000/- to Rs.37,94,000/-, with 7.5 % interest per annum, to the extent indicated above. No Costs.

(ii) the 2nd respondent / Insurance Company is directed to deposit the enhanced award amount, with interest and costs before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, the claim Petitioners/Appellants are entitled to get their share in the enhanced award amount, as per the ratio of apportionment made by the Tribunal. The share of the minor shall be kept in an interest bearing fixed deposit in any of the Nationalized bank, till he attains majority. The 1st claim Petitioner/1st Appellant, who is the guardian of minor, is permitted to withdraw the interest from the deposit of the minor



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once in every three months.

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(iv) the claim Petitioners are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

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Index:yes/no
Internet:yes/no
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To

The Presiding Officer,
Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai.

A.A.NAKKIRAN.J.,

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