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C.M.A.No.2014 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2014 of 2021

1. S. Anusuyadevi
2. Minor Rukchana
3. Minor Hemashree
[Minor appellants represented by her mother,
S. Anusuyadevi, the first appellant herein]
4. M. Amutha
5. P. Mani ... Appellants/Petitioners
Vs.

1. K. Seetharaman
[R1 remained ex-parte before Tribunal.
Hence notice to R1 dispensed with]

2. The Divisional Manager,
United India Insurance Co., Ltd.,
DO 13A, Nethaji Road,
Cuddalore – 607 001. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 26.02.2021 made in M.C.O.P.No.2837 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Cuddalore.

For Appellants : M/s. Ramya V. Rao
For R1 : No appearance
For R2 : Mr. D. Bhaskaran



C.M.A.No.2014 of 2021

JUDGMENT

WEB COPY The Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation against the award passed in M.C.O.P.No.2837 of 2015, dated 26.02.2021, on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore. The claimants are the dependents of the deceased Senthil Kumar, who died in the road accident taken place on 19.06.2015.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimants is that on 19.06.2015 at about 19.15 hours while the deceased was riding his two-wheeler bearing Registration No.TN 31 AW 9568 on Periya Earikkarai Street, Kuzhavadayan, at the same time, a Tata Indicab Taxi bearing Registration No.TN 09 AU 2081 belongs to the first respondent, driven by its driver came in the opposite direction and hit on the deceased and caused instantaneous death. In this regard, a criminal case was also registered against the driver of the first respondent in Crime No.168 of 2015 by the SHO Meensuriti Police Station and the claimants have made claim for compensation for a sum of Rs.50,00,000/-.



C.M.A.No.2014 of 2021

WEB COPY

4. The first claimant is the wife of the deceased Senthilkumar, the second claimant is the son and the third and fourth claimants are the parents of the deceased Senthilkumar.

5. The first respondent was remained ex-parte before the Tribunal and the second respondent, who is the insurer of the Taxi have contested the claim and disputed the alleged negligence act, age, income and dependency of the deceased.

6. Before the Tribunal, the claimants have examined P.W.1 to P.W.3 and Exs.P1 to P14 were marked. On the side of the respondents no oral or documentary evidence marked.

7. Based on the evidences placed on record, the Tribunal in Point No.1 has accepted the case of the claimants and held that the negligent act of the driver of the first respondent the accident had occurred. In Point No.2, the Tribunal has quantified the compensation and held that the claimants are entitled for a sum of Rs.21,26,000/- as compensation.

8. Aggrieved over the quantum of compensation awarded, the



C.M.A.No.2014 of 2021

claimants have come out with this appeal seeking enhancement of compensation.

9. It is submitted by the learned counsel for the claimants that the deceased was earning income more than Rs.20,000/- per month, by running Maxi Cab vehicle for tourists. However, the income projected by the claimants have not been accepted and the Tribunal has notionally fixed the income of the deceased as Rs.10,000/- per month, which is on the lower side and the interest awarded by the Tribunal is also on the higher side hence prays to enhance the compensation.

10. The learned counsel or the Insurance Company has submitted that there is no evidence placed on record to show that the deceased was earning income by running Maxi Cab vehicle for Tourists and Travellers. Hence, the Tribunal has rightly fixed the compensation and prays to confirm the award.

11. I have considered the rival submissions made on both sides and also perused the records available on record.

12. Before the Tribunal the claimants have marked Ex.P11-Certificate



C.M.A.No.2014 of 2021

of Registration of Maxi Cab van, which was used by the deceased for his Tourist and Travels business. They have also produced Ex.P12- Letter of Regional Transport Office, Chidambaram regarding current and previous owners of the vehicle, to show that after the death of deceased, the said vehicle was sold to other person. Exs.P11 and P12 were relied on by the claimants only for the purpose of proving that the deceased was the owner of Maxi Cab van and he was having valid driving licence at the time of accident to drive the same. Apart from the Certificate of Registration, the driving licence and Pan Card of the deceased marked to substantiate their case. However the claimants have not produced any document to prove the exact income earned by the deceased from doing Tourist and Travels business. Hence, the Tribunal has considered the evidences placed on record and fixed the notional income of the deceased is at Rs.10,000/-.

13. It is urged by the learned counsel for the claimants that the notional income fixed by the Tribunal is on the lower side since the norms followed by this Court for the accident taken place in the year 2015, the notional income to be fixed as more than Rs.15,000/-. This Court considering the norms followed and also considering the fact that the deceased herein is a driver by profession and also was the owner of the Maxi



C.M.A.No.2014 of 2021

Cab Van, which would help him to earn more income than the regular drivers hence this Court is of the view that fixing the notional income of Rs.15,000/- would be proper. Accordingly, this Court fixed a sum of Rs.15,000/- as the monthly income of the deceased. The Tribunal has applied multiplier '17' is not proper as per the Judgment of the Hon'ble Apex Court in *Sarla varma and Ors v. Delhi Transport Corporation and Another [AIR 2009 SC 3104]*, the appropriate multiplier is '16' since the age of the deceased is 31 years at the time of accident. As per the Judgment of the Hon'ble Apex Court in *National Insurance Company Ltd., vs. Pranay Sethi and others [2017 (16) SCC 680]*, 40% future prospects to be added. Since the dependants of the deceased is five in numbers 1/4 deducted for the personal expenses of the deceased. In all, compensation under the head Loss of Income fixed as Rs.32,13,000/- {[15000 + 6000 (40% of 15000)] = 21000 x 12 x '17' x 1/4] awarded as compensation. As per the judgment of the Hon'ble Apex Court in *Magma General Insurance Company Ltd., vs. Babu Ram [2018 (18) SCC 130]*, each claimants are entitled for 40% towards loss of consortium. The Tribunal has awarded a total sum of Rs.70,000/- under conventional heads i.e., Loss of Consortium, Loss of Estate and Funeral Expenses and this Court is of the view the same is to be awarded separately. This Court is inclined to grant a sum of Rs.15,000/- each under the head



C.M.A.No.2014 of 2021

'Funeral Expenses' and the head 'Loss of Estate.

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14. Thus, the total compensation awarded 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 granted
1.	Loss of dependency	Rs.20,16,000/-	Rs.32,13,000/-	Enhanced
	Loss of Consortium, Loss of Estate & Funeral Expenses / Modified as Loss of Consortium Loss of Estate Funeral Expenses	Rs.70,000/-	Rs.2,00,000/- Rs.15,000/- Rs.15,000/-	Enhanced
3	Loss of Love and Affection	Rs.40,000/-	---	Rejected
	Total Compensation	Rs.21,26,000/-	Rs.34,43,000/-	Enhanced by Rs.13,17,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.21,26,000/- is hereby enhanced to Rs.34,43,000/- [Rupees Thiry Four Lakhs and Forty Three Thousand only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the award amount, now



C.M.A.No.2014 of 2021

determined 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 a copy of this judgment to the credit of M.C.O.P.No.2387 of 2015, on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Cuddalore. On such deposit, the appellants/claimants are entitled to withdraw the amount, now awarded by this Court, along with proportionate interest and costs, as per the apportionment fixed by the Tribunal, less the amount if any, already withdrawn. The share of the minor claimants is directed to be deposited in any one of the Nationalized Bank till the minor claimants attains majority. On such deposit, the first claimant being the mother of the minor claimants is entitled to withdraw the accrued interest once in three months for the welfare of the minor claimants. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants without any formal application. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

09.11.2023

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C.M.A.No.2014 of 2021

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

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



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C.M.A.No.2014 of 2021

K.RAJASEKAR,J.

ssi

C.M.A.No.2014 of 2021



WEB COPY



C.M.A.No.2014 of 2021

09.11.2023