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CMA.No. 2336 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2021

Coram

**THE HON'BLE MR JUSTICE D. KRISHNAKUMAR
AND
THE HON'BLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI**

CMA.No.2336 of 2021

1.K.A.Manigandan
2.K.Subiksha (Minor)
3.K.Srikanth (Minor)

..Appellant

Vs

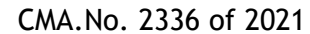
1.Raghu RN
(R1 set exparte before the tribunal)
2.United India Insurance Company Limited,
Motor Third Party Claims,
Silingi Building, 4th Floor,
No. 134, Greams Road,
Chennai-600006

..Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act to set aside the Decree and Judgment dated 13.03.2020 passed in MCOP.No. 3397 of 2018 on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.1, Motor Accidents Claims Petitions) Small Causes Court, Chennai.

For Appellants : M/s. A.Subadra

For respondents : Mr.D.Bhaskaran – R2



[Judgement of the Court was made by *D.KRISHNAKUMAR,J.*]

2. Brief facts of the case is that on 12.05.2018 at about 6.15 hrs, while deceased was walking with her husband at North side of Government Degree College Ground, Nagari Municipality at that time the driver of the Maruthi Omni Car bearing Regn. No. TN-02-W-4901 drove the car in very rash and negligent manner and dashed back side of the deceased, the deceased got stuck below the car and was dragged about 10 feet with car, as a result, she sustained multiple grievous injuries to head, nose and other parts of the body and immediately deceased was taken to Government Hospital, Nagari and thereafter she was taken to SVRRGG Hospital, she succumbed to death. The accident had occurred only due to rash and negligent driving of the driver of the Maruti Omni Car. Hence the claimants/appellants herein, being legal heirs of the deceased M.Lalitha have filed the claim petition, claiming a sum of Rs.35,00,000/-. The tribunal after considering the



CMA.No. 2336 of 2021

oral and documentary evidence, has awarded compensation of Rs.16,08,600/- by fixing monthly income at Rs.8,000/- and concluded that the said vehicle had valid insurance at the time of the accident, therefore being insurer of the vehicle, the 2nd respondent insurance company is liable to pay the compensation at the first instance with a liberty to recover the same from the 1st respondent/owner of the vehicle without filing any application.

3. Being not satisfied with the said award passed by the tribunal in fixing monthly income to the deceased, the claimants/appellants herein have preferred the present appeal for enhancement of compensation.

4. The learned counsel for the appellants has submitted that at the time of the accident, the deceased was aged about 33 years and was doing Tailoring work as self employment and earned Rs.21,000/- per month, whereas the tribunal has fixed income as Rs,8000/- per month as notional income for the year 2018 and awarded compensation of Rs.16,08,600/- without considering the evidence of the appellants/claimants in proper perspective.



CMA.No. 2336 of 2021

5. According to the learned counsel for the appellants, even for the home maker, the monthly income is fixed at Rs.12,000/-, whereas the deceased was doing tailoring work as self employment and was earning Rs.21,000/- per month, therefore a minimum amount of Rs.15,000/- has to be fixed as monthly income of the deceased.

6. The learned counsel appearing for the 2nd respondent/Insurance Company has objected the said claim made by the learned counsel for the appellants and submitted that the claimants/appellants have not produced any documents before the tribunal to prove the monthly income of the deceased. The tribunal in the absence of any materials, the tribunal has rightly fixed the notional income of the deceased at Rs.8,000/- and calculated loss of dependency at Rs.14,33,600/- and also awarded compensation under other permissible heads which comes to total compensation of Rs.16,08,600/- . Therefore the compensation awarded by the tribunal does not require any interference by this Court and the appeal seeking enhancement by the appellants is liable to be dismissed.

7. Heard both sides and perused the materials available on record.



CMA.No. 2336 of 2021

8. The main contention of the learned counsel for the appellants is that the tribunal without considering the fact that the deceased was earning Rs.21,000/- as a tailor, fixed notional income at Rs.8000/- ,which is unreasonable and requires modification.

9. It is an admitted fact that even the daily wages employee is entitled to fix monthly income at Rs.9000/-, therefore, though the learned counsel for the 2nd respondent/Insurance Company strongly objected to fix monthly income as Rs.15,000/-, by taking note of the year of the accident which took place in the year 2018, We are of the view that it would be reasonable to fix monthly income of the deceased at Rs.12,000/-.

10. Accordingly, the compensation under head of Loss of dependency is modified by taking monthly income of the deceased income at Rs.12,000/-. As per **Pranay Sethi's Case**, after adding 40% of the income of the deceased towards future prospects, the total income of the deceased would come to Rs.16,800/- (12000 + 4800). Hence the annual income of the petitioner is arrived at Rs. 2,01,600/- (16,800 x 12).

11. As per the **Sarala Verma Case**, since the appellants 1 to 3 are the dependents of the deceased, 1/3 of income has to be



CMA.No. 2336 of 2021

deducted towards personal and living expenses of the deceased.

Therefore, the balance Rs.1,34,400/- (2,01,600 – 67,200) is considered to be the contribution of the dependent family per annum. So far as multiplier is concerned, since the age of the deceased is 32 years as per Ex.P10(Aadhaar Card of the deceased), the multiplier will be 16. Therefore, the total **loss of dependency would be Rs.21,50,400/-** (Rs.1,34,400/- x 16).

12. The learned counsel for the 2nd respondent/Insurance Company by relying upon the decision of the Hon'ble Supreme Court rendered in the case of *Magma General Insurance Company Ltd., Vs. Nanu Ram alias Chuhru Ram and Others reported in (2018) 18 Supreme Court Cases 130*, has argued that the compensation awarded by the tribunal at Rs.1,00,000/- towards 'Loss of Love of Affection' is excessive and the same has to be reduced to Rs.40,000/- each to the appellants 2 & 3. We have also considered the said submissions made by the learned counsel for the 2nd respondent/Insurance Company and modified the compensation awarded by the tribunal towards **Loss of Love and Affection to Rs.80,000/-** (Rs.40,000/- each to the appellants 2 & 3)

13. There is no dispute as against the compensation awarded under other heads viz., Loss of Consortium, Loss of Estate,



CMA.No. 2336 of 2021

Transport charges and Funeral expenses, hence the compensation awarded under these heads are confirmed and the total compensation awarded by the tribunal is modified as follows;

Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs.
Loss of dependency	14,33,600/-	21,50,400/-
Loss of Love and Affection	1,00,000/-	80,000/- (Rs.40000/- each to the appellants 2 & 3)
Loss of Consortium	40,000/-	40,000/-
Loss of Estate	15,000/-	15,000
Transport Charges	5,000/-	5,000
Funeral Expenses	15,000/-	15,000
Total	16,08,600/-	23,05,400/-

14. In view of the above modification , the compensation awarded by the tribunal at Rs. 16,08,600/- is enhanced to Rs.23,05,400/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

15. The 2nd respondent /Insurance Company is directed to deposit the entire compensation amount as modified by this Court along with interest, less the amount already deposited, within a



CMA.No. 2336 of 2021

period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1 to 3/claimants are permitted to withdraw the compensation along with interest and costs as per the apportionment fixed by the tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

16. The 2nd respondent/Insurance company is directed to pay the compensation as modified by this Court along with interest to the appellants/claimants at the first instance and liberty is granted to 2nd respondent/insurance company to recover the same from the 1st respondent/owner of the vehicle.

17. To the above extent, the award passed by the tribunal is modified and consequently the Civil Miscellaneous Appeal is partly allowed. No costs.

[D.K.K.J.]

[K.G.T.J.]

09.03.2023

Speaking/Non Speaking Judgment
Index: Yes/No
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CMA.No. 2336 of 2021

To

1. The Special Sub Court No.1,
Motor Accidents Claims Tribunal,
Small Causes Court, Chennai

2. The Section Officer,
V.R.Section,
High Court, Madras.



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