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C.M.A.No.2535 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.2535 of 2023

1.Thamayandhi
2.Sathishkumar
3.Sasikala

... Appellants / Petitioners

Vs

1.Udhayakumar
(Since 1st respondent remained exparte before the
Tribunal, his presence may be dispensed with)

2.The Divisional Manager
The Oriental Insurance Company Limited
No.32/13, Phase No.2, Sathuvachary
Vellore.

... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to enhance the award against the judgment and decree dated 15.09.2016 made in M.A.C.T.O.P.No.61 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvannamalai.

For Appellants	: Ms.Suneethi Abirami for Ms.M.Malar
For Respondents	: Mr.P.Kandasamy for R2 R1 - Dispensed with



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JUDGMENT

Dissatisfied with the perceived inadequacy of the compensation awarded in a fatal accident case in M.A.C.T.O.P.No.61 of 2015 on the file of Special Sub Court (MACT), Thiruvannamalai, the dependants of the victims / claimants are before this Court with this appeal. On 01.11.2014, a certain Ganesan was killed in a road accident when the motorcycle which he was riding, dashed against by a lorry bearing No.TN27 D 2288 belonging to the first respondent and registered with the second respondent.

2. The victim was 46 years old and was stated to be running a tea stall and eatery. The Tribunal reckoned his monthly income notionally at Rs.5,500/-, to which, it added another Rs.1,650/- towards future prospects, and deducted 1/3rd towards the personal expenditure and arrived at a net value of loss of dependency at Rs.7,43,652/-, and including the other heads of compensation, it arrived at the total compensation at Rs.9,08,652/-. This, it directed both the owner and insurance company to pay with interest at 7.5% per annum. Aggrieved by the quantum of compensation awarded, the claimants are now before this Court.



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3. Ms.Suneethi Abirami, learned counsel for the appellant argued that given the fact that the victim is running only a tea stall and eatery, and managing a family of three dependants, the notional income fixed by the Tribunal is on a lower side.

4. Per contra, the learned counsel for the second respondent argued that the claimants have not produced any material to show that the victim was actually running a tea stall and eatery businesses, and if only he had done it, he would have had necessary licence issued by the local body for running the businesses.

5. Responding to the same, the counsel for the appellants submitted that in paragraph No.23 of the claim petition, and in paragraph No.1 of the affidavit of chief-examination of P.W.1, it is alleged that the victim was running a tea stall and eatery, but this was not pointedly countered and cross-examined by the respondent, when PW.1 was in the box.



6. After weighing the rival submissions, this Court is constrained to hold that the victim indeed was running a tea stall and eatery. And given the fact that he is 46 years, the time when he died, to reckon his income at Rs.5,500/- is truly on the lower side. Here this Court has to balance the submissions of the learned counsel for the respondent about the absence of any documentary evidence to suggest the size of the business. Taking both the facts into consideration, this Court fixes Rs.7,500/- per mensem notionally as the income of the victim, to which it added 30% and applies 13 as a multiplier, and deducts 1/3rd towards his personal expenditure and arrived at a net value of loss of dependency at Rs.10,14,000/-. So far as other of compensation is concerned, this Court does not incline to interfere with the same and they are confirmed. The award now would be as below :

<i>Sl.No.</i>	<i>Heads of Compensation</i>	<i>Amount (Rs.)</i>
1.	Loss of Income	10,14,000/-
2.	Loss of consortium	1,00,000/-
3.	Loss of love and affection	40,000/-
4.	Funeral Expenses	25,000/-
Total :		11,79,000/-



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7. In conclusion this Court allows the appeal and enhances the compensation from Rs.9,08,652/- to Rs.11,79,000/-. The respondent is now required to deposit the sum of Rs.11,79,000/- with interest at the rate of 7.5% less (a) any amount which has been already deposited; and (b) interest payable for 1947 days delay in filing the appeal, within a period of six weeks from the date of receipt of a copy of this order. No costs.

23.11.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking orders

To:

1.The Judge
Special Sub Court
Motor Accidents Claims Tribunal
Thiruvannamalai.

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



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N.SESHASAYEE.J.,

ds

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