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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM:

HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.2314 of 2021

1. V.Selvaraj
2. S.Tamilselvi

.. Appellants

Versus

1. A.Ramachandran

2. HDFC ERGO GI. Insurance Co.Ltd.,
R R Towers, II, 2nd Floor,
No.94/95, TVK Industrial Estate,
Guindy, Chennai – 600 032.

.. Respondents

Prayer:- This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09th day of February, 2021 made in M.C.O.P.No.6128 of 2018 on the file of the Chief Court/Motor Accidents Claims Tribunal/Court of Small Causes, Chennai.



For Appellants : Mr.P.T.Saleem Fathima

For Respondents : R1 – No appearance.

Mr.S.Arunkumar,

For R2.

JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimants, seeking enhancement of compensation granted by the Tribunal in the award dated 09.02.2021 made in M.C.O.P.No.6128 of 2018 on the file of Motor Accidents Claims Tribunal/Chief Judge, Court of Small Causes, Chennai.

2.The appellants are the claimants in M.C.O.P.No.6128 of 2018 on the file of Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai, claiming a sum of Rs.43,50,000/- as compensation for the death of their son S.Vimalraj in a road accident that took place on 27.08.2018.



WEB COPY 3. The brief facts, which led to the filing of the present appeal, are as follows:

On 27.8.2018, at about 00.15 hours, while the deceased was riding the motorcycle bearing Registration No.TN45 BT 0128 along Chennai-Madurai National Highways, from east to west direction, driver of the first respondent's Omni Bus bearing Registration No.TN25 BE 8169 came in a rash and negligent manner from South to North and dashed against the motorcycle, due to which the rider of the motorcycle died on the spot.

3.1. At trial, on the side of the petitioners, P.W.1 to P.W.3 were examined and Exs.P1 to P23 were marked. On the side of the respondent, neither any witness was examined nor any document was marked.



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3.2 The Tribunal, after evaluating the evidence, concluded that the accident occurred only due to the rash and negligent driving by the driver of the omni bus, belonging to the first respondent and directed the respondents to pay a sum of Rs.7,83,500/- as compensation to the appellants/claimants. Not being satisfied by the amount awarded by the Tribunal under various heads, the appellants/Claimants have come out with the present appeal seeking enhancement of compensation.

4. Mr.P.T.Saleem Fathima, learned counsel appearing for the appellants vehemently contended that the first respondent's Omni Bus bearing Registration No.TN25 BE 8169 was driven in a rash and negligent manner from South to North and dashed against the motorcycle. Due to which the rider of the motorcycle died on the spot. The Tribunal fixed the age of the deceased as 22, has taken the multiplier 18 and he was working in Rane Engine Valve Ltd earning a sum of Rs.15,000/- by taking the salary slips and after deducting 50% towards his personal expenses, awarded a sum of Rs.9,890/- and after providing



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compensation towards funeral expenses, loss of love and affection, awarded a sum of Rs.7,83,500/-. The compensation awarded by the Tribunal under different heads is very meagre and, thus, prayed for enhancement of the same.

5. Per contra, the learned counsel for the second respondent/Insurance Company would strenuously argue that the Tribunal has properly arrived at a just compensation and the same does not warrant any interference by this Court.

6. This Court considered the rival submissions carefully and also perused the materials available on record.

7. It is seen that at the time of accident the deceased was aged 22 years and working as Machine Man at M/s.Rane Engine Valve Ltd as per Ex.P8.



8. Considering the submissions made, income of the deceased is fixed at Rs.14,000/- per month and 40% is taken towards the future prospects as per the law laid down by the Hon'ble Supreme Court of India in the case of *National Insurance Company Limited Vs. Pranay sethi and others reported in 2017 (16) Supreme Court Cases 680*. The total income is fixed as Rs.19,600/- (14,000 + 5600 [14,000 X 40%]). As per the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation)**, the multiplier applicable is '18'. By deducting 50% towards personal expenses, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.21,16,800/- (Rs.19,600/- X 12 X 18 X 50%). Tribunal has awarded a sum of Rs.20,000/- each to the parents for loss of love and affection, which is meagre. Hence, a sum of Rs.40,000/- each is awarded to the parents under the head loss of love and affection. A sum of Rs.15,000/- awarded by the Tribunal towards funeral expenses is hereby confirmed. Accordingly, the compensation is reworked as follows:



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S.No	Description	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Loss of dependency	15,12,000/-	21,16,800/-
2	Towards Funeral Expenses	15,000/-	15,000/-
3	Loss of Love and Affection	40,000/-	80,000/-
4	Total compensation	15,67,000/-	22,11,800/-
	(Deducting 50% contributory negligence) Total compensation payable	7,83,500/-	11,05,900/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,83,500/- is hereby enhanced to Rs.11,05,900/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight



weeks from the date of receipt of a copy of this judgment to the credit of

M.C.O.P.No.6128 of 2018 on the file of Motor Accidents Claims

Tribunal, Chief Judge, Court of Small Causes, Chennai. On such deposit,

the appellants are permitted to withdraw the enhanced award amount

equally along with interest and costs, less the amount if any, already

withdrawn. No costs.

28.06.2023

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Index : Yes / No

Internet : Yes/ No

Speaking/non-speaking order



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To

- 1.The Chief Judge,
Small Causes Court,
Motor Accidents Claims Tribunal, Chennai.

- 2.The Section Officer,
V.R.Section, High Court, Chennai.



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R.KALAIMATHI, J.

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