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C.M.A.No.1569 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.1569 of 2022

1.Anjalai

2.Minor S.Sivaprakash

3.Minor S.Sivaranjani

4.Achikannau

... Appellants

vs.

1.R.Vanitha

2.The Divisional Manager,
The United India Insurance Co. Ltd.,
Division Office,
13-A, Nethaji Road,
Cuddalore.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.2036 of 2019 dated 28.02.2022 on the file of the Motor Accident Claims Tribunal / I Additional District & Sessions Judge, Cuddalore.

For Appellants : Mr.Ramya V. Rao



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For R1 : Mr.R.L.Dhilipan pandian

For R2 : M/s.R.Rathnathara

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J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Judgment and Decree in M.C.O.P.No.2036 of 2019 dated 28.02.2022 on the file of the Motor Accident Claims Tribunal / I Additional District & Sessions Judge, Cuddalore.

2.The said appeal is filed by the legal heirs of the deceased Sivachidambaram. The appeal is filed by the claimants seeking enhancement of compensation.

3.On 29.08.2019, while the deceased was riding his TVS Moped, the driver of the JCB drove the vehicle in a rash and negligent manner and dashed against the deceased's motor cycle causing him fatal injuries.

4.According to the learned counsel for the claimants, the deceased was



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39 years of age at the time of the accident and as a Mason, he was earning Rs.20,000/- per month. The claimants therefore filed the claim petition seeking a sum of Rs.30,00,000/- as compensation.

5.Both the first and second respondents filed their counter denying all the allegations and the averments made in the claim petition, apart from disputing the negligence, liability and quantum.

6.Before the Claims Tribunal, the first claimant examined herself as PW1 and one other witness as PW2. The claimants marked Ex.P1 to Ex.P8 in support of their claim. On the side of the second respondent RW1 was examined and Ex.R1 to Ex.R3 were marked.

7.The Claims Tribunal on an assessment of the entire evidence on record returned a finding of negligence against the driver of the first respondent's vehicle. The Claims Tribunal assessed the compensation at Rs.16,07,500/- along with 7.5% interest. The Claims Tribunal on the issue of liability held that the driver of the first respondent was not having valid



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driving licence and therefore directed the second respondent Insurance Company to pay the award amount and thereafter, recover the same from the first respondent. Not satisfied with the compensation awarded by the Claims Tribunal, the claimants have filed the above appeal.

8.The learned counsel appearing for the appellants submitted that the assessment of notional income at Rs.8,000/- by the Claims Tribunal was erroneous. The learned counsel further submitted that considering the accident took place in the year 2019 and that the deceased as a Mason was maintaining a family of four members, the Tribunal ought to have fixed the notional income at higher sum. The learned counsel further submitted that the award of the Tribunal towards loss of love and affection at Rs.20,000/- to the claimant Nos.2 to 4 was unsustainable. On the amounts under other heads the learned counsel did not have any serious objection.

9.The learned counsel for the respondents on the other hand submitted that the award passed by the Tribunal was just fair and reasonable and did not call for any interference in the appeal.



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WEB COPY 10.I have heard both the learned counsels and have perused the materials placed on record.

11.It is seen that the deceased was aged 39 years at the time of the accident. It was claimed that as a Mason, the deceased was earning Rs.20,000/- per month. The Tribunal in the absence of any evidence in support of the income assessed the notional income at Rs.8,000/- per month. In my view, the assessment of income at Rs.8,000/- by the Tribunal was not justified. Considering that the accident took place in the year 2019 and the deceased was maintaining a family of four members, apart from himself, I am of the view that notional income fixed by the Tribunal cannot be sustained.

12.Taking into consideration of the facts of the case, I am of the view that the income of the deceased could be fairly fixed at Rs.12,000/- per month. 40% of the income is added towards future prospects, as there were four dependents, a deduction of $\frac{1}{3}^{\text{rd}}$ is made towards the personal expenses



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of the deceased and the multiplier 15 is adopted. Therefore, the loss of income is assessed at $12000 \times 12 = 144000$; $144000 \times 40 / 100 = 57600$; $144000 + 57600 = 201600$; $201600 \times 15 = 3024000$; $3024000 / 4 = 756000$; $3024000 - 756000 = 2268000$.

13.The learned counsel appearing for the appellants is justified in his submission that the Tribunal erred in awarding Rs.20,000/- towards loss of love and affection to the claimants. As per the Judgment of the Hon'ble Supreme Court a sum of Rs.1,32,000/- at Rs.44,000/- each is awarded towards loss of love and affection to the claimants. I find that the compensation towards other heads are fair and reasonable and so the same are not interfered. The order of the Tribunal in so far as the direction for pay and recovery is concerned is confirmed. In the light of the above discussions, the award of the claims Tribunal is modified as follows:

Sl.No.	Heads	Award of the Tribunal	Award of this Court
1	Loss of Income	Rs.15,12,000/-	Rs.22,68,000/-
2	Loss of Consortium	Rs. 44,000/-	Rs. 44,000/-
3	Loss of love and affection	Rs. 20,000/-	Rs. 1,32,000/-
4	Transport Expenses	Rs. 15,000/-	Rs. 15,000/-



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5	Funeral Expenses	Rs. 16,500/-	Rs. 16,500/-
TOTAL		Rs.16,07,500/-	Rs.24,75,500/-

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14.In the result, the claimants shall be entitled to enhanced compensation of Rs.24,75,000/- along with 7.5% interest. The Insurance company is directed to deposit the enhanced compensation of Rs.24,75,000/- along with 7.5% interest, less the amount, if any, already deposited within a period of twelve weeks from the date of receipt of a copy of this order and thereafter to recover the same from the 1st respondent. On such deposit being made the claimants shall be entitled to withdraw the same as per the apportionment made by the Claims Tribunal.

15.The appeal is therefore partly allowed. There shall be no order as to costs.

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Index : yes/no
Internet : yes/no
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To

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1.The Motor Accident Claims Tribunal /
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2.The Section Officer,
V.R.Section,
High Court, Madras.

N.MALA, J.
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