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C.M.A.No.2342 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.No.2342 of 2014

R. Vinitha

... Appellant /Petitioner

Vs.

1. J. Vijiya

[R1 remained ex-parte before Tribunal.

Hence, notice to R1 dispensed with]

2. The United India Insurance Company Ltd.,

280 – Ooty Main Road,

Mettupalayam, Coimbatore District.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 28.11.2011 made in M.C.O.P.No.826 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sathyamangalam.

For Appellant : Mr. Ma. P. Thangavel

For R1 : Ex-Parte

For R2 : Ms. I. Malar



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant seeking enhancement of compensation Awarded by the Tribunal in M.C.O.P.No.826 of 2010, dated 28.11.2011, on the file of the Motor Accidents Claims Tribunal, Sub Court, Sathyamangalam, for the death of the son of the claimant in the road accident taken place on 20.08.2010.

2. The parties are referred to herein according to their status and ranking before the trial Court.

3. The case of the claimant is that the claimant's son namely Jaswa Sujith Paul was driving his two-wheeler bearing Registration No.TN 43 B 3486 on 20.08.2010 at about 6.00 a.m., on Keathi to Bala Road, while he reached near A. T. Lawrance House, a Lorry bearing Registration No.TN 31 E 7366, driven by its driver in high speed, came in the opposite direction and dashed on the two-wheeler of the deceased and he died on the spot. A criminal case was registered in Crime No.90 of 2010, under Sections 279 and 304-A IPC against the driver of the lorry, on the file of the Keathi Police Station. The deceased was aged about 20 years studying XII standard, hence prays compensation for a sum of Rs.10,00,000/- for the death of the



deceased.

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4. The first respondent is the owner of the offending lorry has not contested the claim and remained ex-parte. The second respondent is the insurer of the lorry has contested the claim and filed counter and contended that there is no negligent act on the part of the driver of the lorry and the accident was taken place only due to the negligent act of the deceased and that the claim made under various heads are also on the higher side hence, prays to dismiss the Claim Petition.

5. Before the Tribunal, on the side of the petitioner, P.W.1 and P.W.2 were examined and Exs.P1 to P8 were marked. On the side of the second respondent, no witness was examined and Exs.R1 and R2 were marked.

6. Based on the evidences place on record, the Tribunal in Point No.1 has held that the negligent act of the driver of the lorry is responsible for the accident and in Point No.2 the Tribunal has quantified the compensation and awarded a sum of Rs.2,15,000/- as compensation along with interest at the rate of 7.5% per annum from the date of filing of Claim



Petition till the date of deposit.

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7. Aggrieved over the quantum of compensation awarded, the claimant has come forward with this appeal. The respondents have not filed any appeal against the Award passed by the Tribunal.

8. The learned counsel for the appellant/claimant submitted that the claimant is a widowed mother of the deceased and the deceased was also +2 student and she lost her only son and that the Tribunal has not properly quantified the compensation for the death of the deceased and awarded a meager sum of Rs.1,60,000/- fixed as loss of income and also future prospects has not been granted hence prays to enhance the compensation. The learned counsel also relied on the Judgment of the Hon'ble Apex Court passed in *V.Mekala vs M.Malathi and another* reported in **2014 (2) TN MAC 6 SC**].

9. Countenancing the arguments of the learned counsel for the appellant, the learned counsel for the second respondent/Insurance Company, Ms. I. Malar, submitted that the deceased herein is a student studying +2 and after appreciating the evidences placed on record, the



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Tribunal has quantified the compensation and since the injured is not earning member of the family, the Tribunal has awarded lumpsum compensation of Rs.1,60,000/- for the loss of income and also awarded additional amount of Rs.55,000/- under conventional heads and there is no need for interfering in the award passed by the Tribunal hence, prays to confirm the award. She has also relied on the Judgment of the Hon'ble Apex Court in ***Rajendra Singh and Others vs. National Insurance Company Limited and Others*** [2020 (7) SCC 256].

10. I have considered the rival submissions on both sides and also perused the records.

11. The Hon'ble Apex Court in ***V.Mekala vs M.Malathi and Another*** held that deceased was aged about 16 years at the time of accident and the accident occurred in the year 2012 and that the notional income has been fixed as Rs.10,000/- per month. Since the deceased was a brilliant student, eventhough the deceased was not earning member of the family, by following the Judgment of the Hon'ble Apex Court in ***Reshma Kumari and others vs. Madan Mohan and another*** [2009 (13) SCC 422] future prospects also awarded. In ***Rajendra Singh and Others vs. National***



Insurance Company Limited and Others case cited above, the Hon'ble Apex Court has held that fixation of notional income of the child, aged about 12 years, by the Tribunal as Rs.36,000/- per annum is proper for the accident taken place in the year 2012.

12. Admittedly, in this case, the deceased was aged about 20 years old and was a +2 student, eventhough, he is not an earning member, compensation shall be awarded by fixing notional income. Accordingly, this Court is inclined to fix notional income. Since the accident was taken place on 20.08.2010, the notional income of the deceased is fixed as Rs.6,000/- per month. By adopting multiplier '18' as held by the Judgment of the Hon'ble Supreme Court in ***Sarla varma and Ors v. Delhi Transport Corporation and Another [AIR 2009 SC 3104]***, after deducting 1/2 as personal expenses of the deceased, 40% future prospects to be added as per the Judgment of the Hon'ble Supreme Court in ***National Insurance Company Ltd., vs. Pranay Sethi and Others [2017 (16) SCC 680]***. The total compensation of Rs.9,07,200/- $[(6000 \times 12 \times 18 \times 1/2) = 6,48,000 \times 40\%]$ is awarded under the head loss of income. The compensation awarded under conventional heads are concerned, the Tribunal has awarded a sum of Rs.5,000/- for funeral expenses and this Court finds the same is meager and



the same is enhanced to Rs.15,000/- under the head funeral expenses. This

Court is inclined to grant a sum of Rs.15,000/- under the head loss of estate.

The Tribunal has awarded Rs.25,000/- under the head 'Loss of Love and Affection and the same is modified to Rs.40,000/- is under the head "Loss of Consortium'.

13. Thus the compensation awarded by the Tribunal under various heads are modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of Income	Rs.1,60,000/-	Rs.9,07,200/-	Enhanced
2.	Funeral Expenses	Rs.5,000/-	Rs.15,000/-	Enhanced
3.	For Loss of Estate	Rs.25,000/-	Rs.15,000/-	Reduced
4.	For Loss of Consortium	Rs.25,000/-	Rs.40,000/-	Enhanced
	Total	Rs.2,15,000/-	Rs.9,77,200/-	Enhanced by Rs.7,62,200/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.2,15,000/- is hereby enhanced to Rs.9,77,200/- [Rupees Nine Lakhs Seventy Seven Thousand and Two Hundred only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit.



C.M.A.No.2342 of 2014

WEB COPY

The second respondent/Insurance Company is directed to deposit the award amount, now 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.826 of 2010, on the file of the Motor Accidents Claims Tribunal, Sub Court, Sathyamangalam. On such deposit, the claimant is permitted to withdraw the award amount, now determined by this Court along with proportionate interest and costs, less the amount, if any, already withdrawn. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

27.09.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The Sub Judge,



C.M.A.No.2342 of 2014

Motor Accidents Claims Tribunal,
Sathyamangalam.

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

K.RAJASEKAR,J..

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