



C.M.A.No.2506 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.No.2506 of 2021

1. S. Perumal
2. H. Sumathi
3. P. Arunkumar ... Appellants /Petitioners

Vs.

1. M. Kumar
[R1 remained ex-parte before Tribunal.
Hence notice to R1 dispensed with]

2. The Oriental Insurance Company Limited,
Motor Third Party Hub,
No.115, Broadway, Chennai – 108. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 10.03.2021 made in M.C.O.P.No.5253 of 2016 on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellants : Mrs.D. Jeevitha
For Mr. R. Nalliyappan
For R1 : No appearance
For R2 : Mr. N. Sampath



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation against the award passed by the Tribunal in M.C.O.P.No.5253 of 2016, dated 10.03.2021, on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The first petitioner is the husband of the deceased Radha and the second and third petitioners are the daughter and son of the deceased.

4. The case of the claimants is that on 14.07.2016 at about 06.45 hours, the deceased was walking on the Velacherry to Medavakkam main road Opposite to Vijayanagaram IDBI Bank on the West to East direction, at that time, the motorcycle bearing Registration No.TN 21 BA 7146 driven by the first respondent in rash and negligent manner and dashed on the deceased and caused severe injuries to him and subsequently, she has succumbed at Government General Hospital on 16.07.2016. In this regard, a criminal case was also registered against the first respondent in Crime No.523/S2/2016 under Sections 279, 304(A)IPC and Section 134 (a) & (b) of the Motor Vehicles Act.

5. The first respondent has not come forward to contest the



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claim and was remained ex-parte. The second respondent has contested the claim and filed counter and denied the age, occupation and income of the deceased and also the manner, in which the accident had taken place.

6. Based on the evidences placed on record, the Tribunal in Point No.1 has held that the driver of the two-wheeler is a tortfeasor and in Point No.2, the Tribunal has quantified the compensation and awarded a sum of Rs.6,00,200/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation.

7. Aggrieved over the quantum of compensation, the claimants have approached this Court seeking for enhancement of compensation awarded. The Insurance Company has not come forward to file any appeal challenging the same.

8. Mrs. D. Jeevitha, learned counsel for the claimants has submitted that the notional income fixed by the Tribunal for the deceased is on the lower side. Even though, there is evidence placed on record to show that she was a Housekeeper but the Tribunal has not accepted the evidence hence prays to enhance the compensation. She has also relied on the



vs. *Avinav Kannan and Others [2019 (1) TN MAC 54 (DB)]*.

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9. Mr. N. Sampath, learned counsel for the Insurance Company has submitted that the Tribunal after considering the evidences adduced and after critical analysis has awarded compensation by the Tribunal under various heads and the same are just and reasonable. Hence prays to confirm the award.

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

11. The Tribunal while fixing the notional income of the deceased has held that the claimants have not proved the income of the deceased and applied the notional income and fixed Rs.6,000/- as notional income and awarded 10% future prospects, after considering the age of the deceased as 56 years at the time of accident, the Tribunal has awarded compensation.

12. This Court, consistently following the Judgments of this Court in ***Andal and others vs. Avinav Kannan and Others*** case cited above, wherein, it has been held that while fixing the notional income of various persons including manual labourer, the cost of price index can be taken into consideration, based on the Judgment passed by the Hon'ble Apex Court in

<https://www.mhc.tn.gov.in/judicial> ***Syed Sadiq vs. Union of India Limited Company [2014 (1) TN MAC 549]***.



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13. By following the above Judgments, this Court is inclined to fix the notional income is as follows: $6500 \times 264 / 129$ (2008 as base year) = Rs.13,302/- @ Rs.13,300/- . Considering the age of the deceased as 56 years at the time of accident, the Tribunal properly applied multiplier of '9' and future prospects 10% has to be awarded. Considering the dependants of the deceased the Tribunal has rightly deducted $1/3^{\text{rd}}$ as the personal expenses of the deceased and the same is hereby confirmed.

14. Each claimants are entitled to get Rs.40,000/- consortium as per the Judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others [2017 (2) TNMAC 609 (SC) : 2017 (16) SCC 680]***. Accordingly, Rs.1,20,000/- $[40000 \times 3]$ is awarded under the head loss of consortium.

15. The loss of consortium includes loss of love and affection as per the Judgment of the Apex Court in ***United India Insurance Co., Limited vs. Satinder Kaur and Ors. [MANU/SC/0500/2020:(2021) 11 SCC 780]***. Accordingly, the compensation awarded under the head loss of Income is calculated as follows: $[13300 \times 12 \times 9 \times 10\% \times 1/3 = \text{Rs.8,61,840/-}]$. As far as the compensation awarded by the Tribunal under various heads are concerned the same are just and reasonable and the same



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are hereby confirmed.

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16. Thus the compensation awarded by the Tribunal under various heads are hereby 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 Dependency	Rs.4,75,200/-	Rs.8,61,840/-	Enhanced
2.	Loss of Consortium	Rs.40,000/-	Rs.1,20,000/-	Enhanced
3.	Loss of Love and Affection	Rs.50,000/-		Rejected
4.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
5	Transport Charges	Rs.5,000/-	Rs.5,000/-	Confirmed
6	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
	Total	Rs.6,00,200/-	Rs.10,16,840/-	Enhanced by Rs.4,16,640/-

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.6,00,200/- is hereby enhanced to Rs.10,16,840/- [Rupees Ten Lakhs Sixteen Thousand Eight Hundred and Forty only] together with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit. 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.5253 of 2016,



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on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai. On such deposit, the claimants are permitted to withdraw their respective share of the award amount, now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The second respondent-Insurance Company is permitted to withdraw the award amount if any, lying in the credit of M.C.O.P.No.5253 of 2016, if the award amount has already been deposited by them. Since this Court has enhanced the compensation, the appellants/claimants are 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.

01.12.2023

ssi
Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

K.RAJASEKAR,J.,

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To

<https://www.mhc.tn.gov.in/judges> The II Judge (Full Additional In-charge), Small Causes Court,



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Motor Accidents Claims Tribunal,
Chennai.

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

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