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C.M.A.No.3570 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3570 of 2014

1.M.Kittusamy

2.K.Selvamani

... Appellants

..Vs..

1.R.Sampath

2.K.Purushothaman

3.The Branch Manager

M/s.New India Assurance Co. Limited

New No.372, T.T.K Road

Alwarpet, Chennai-18.

(Respondents 1 & 2 remained exparte
before the Tribunal)

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decretal order dated 12.02.2013 made in M.C.O.P No.4285 of 2009 on the file of the Motor Accident Claims Tribunal/ Chief Small Causes Court at Chennai.

For Appellants

: Mr.M.Lokesh

For Mr.Ma.P.Thangavel

For Respondents

: Mr.K.Vinod for R3

R1 & R2 Exparte before the Tribunal



C.M.A.No.3570 of 2014

WEB COPY

JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 12.02.2013 passed by the Motor Accident Claims Tribunal/ Chief Judge, Small Causes Court, Chennai, in M.C.O.P No.4285 of 2009.

2. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of dependency Monthly Income Rs.10,000/- + 30% (-) 1/2 deduction – Rs.6,500/-(Rs.6,500 x 12 x 14)	10,92,000/-
Loss of Love and affection to parents	40,000/-
Funeral Expenses	10,000/-
Total	11,42,000/-

3. Before the Tribunal, the Appellants/claimants has filed 29 documents which were marked as Ex.P1 to Ex.P29 and two witnesses were examined as PW1 to PW2 on their side. On the side of the 3rd



C.M.A.No.3570 of 2014

Respondent/Insurance Company, neither any document was filed nor any witness was examined.

4. Heard the learned counsel for the appellants and the learned counsel for the third respondent/Insurance company and I have perused the materials on record.

5. The learned counsel appearing for the Appellants/Claimants submitted that the entire quantum of compensation awarded by the Tribunal is very low. As seen from Ex.P26 statement of account, the deceased was working as Sales Executive cum Team Leader in HDFC Bank and was earning Rs.11,474/-, but the Tribunal has fixed only Rs.10,000/- as monthly income of the deceased which is very low. The Tribunal has wrongly awarded 30% future prospects without following the judgment of the Hon'ble Supreme Court. The Tribunal has erred in adopting the multiplier 14 instead of 18 multiplier. He further submitted that no amount was awarded towards Loss of Estate and Transport Expenses and the compensation amount awarded towards Pecuniary benefits, Loss of Love



C.M.A.No.3570 of 2014

and Affection and Funeral Expenses are very meagre and hence, he prayed to enhance the compensation.

6. The learned counsel appearing for the third respondent/Insurance Company submitted that the Tribunal after analysing the evidence on record, has rightly awarded the compensation to the appellants/claimants and hence, the award passed by the Tribunal does not warrant any interference by this Court.

7. The accident occurred on 16.04.2008 at about 1.30 p.m, at Medavakkam Main Road, opposite to Kilkattalai Pepsi Hollow Block Company. The S-7 Madipakkam Police Station registered a case in Crime No.278 of 2008 under Sections 279 and 304(A) IPC. While the deceased Periyasamy was proceeding in his Motorbike bearing Registration No.TN 36 X 2229, the driver of the Water Tanker Lorry bearing Registration No.TN 22 1528 came in a rash and negligent manner and hit against the deceased. Due to the accident, he sustained fatal injuries all over the body and died on the way to hospital. Thereafter, the claim petition was filed by



C.M.A.No.3570 of 2014

the father and mother of the deceased, the claimants/appellants herein herein. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the respective parties.

8. As far as the future prospects is concerned, the Tribunal has erred in granting 30% future prospects without following the decision of Hon'ble Supreme Court in *Pranay Sethi* case. Hence considering the age of the deceased was 24 years at the time of accident, it would be appropriate to grant 40% future prospects.

9. As far as the multiplier is concerned, the Tribunal has erred in applying 14 multiplier instead of 18 multiplier. Since the deceased was aged 24 years at the time of accident as per Ex.P10 driving license, Ex.P15 Higher Secondary School leaving certificate, Ex.P22 M.B.A transfer certificate and Ex.P25 pan card of the deceased, it would be appropriate to adopt 18 multiplier as per the *Sarla Verma* case. In the claim petition, it was stated that the deceased was working as Sales Executive cum Team Leader for two years with effect from 05.09.2007 to 04.09.2009 on contract



C.M.A.No.3570 of 2014

basis in HDFC Bank Ltd., and was earning Rs.10,000/-. Though the contract period is two years only from 05.09.2007, considering the educational qualification, fluctuation in the income of the deceased as seen from Ex.P26 bank statement and the family circumstances, the Tribunal has rightly fixed the monthly income of the deceased at Rs.10,000/-. Since the deceased was a bachelor, the Tribunal has rightly deducted 50% towards the personal expenses of the deceased. Accordingly, the loss of dependency is modified from Rs.10,92,000/- to Rs.15,12,000/- by adding 40% future prospects instead of 30% and applying '18' multiplier instead of '14' as detailed below:

$$10000 + 40\% (-) 50\% \times 12 \times 18 = \text{Rs.15,12,000/-}$$

10. In addition to the pecuniary loss sustained by the appellants, the Tribunal has granted the compensation of Rs.40,000/- to the appellants/claimants towards love and affection and Rs.10,000/- towards funeral expenses. However, the compensation awarded by the Tribunal towards funeral expenses and loss of love and affection is low in the



C.M.A.No.3570 of 2014

considered view of this Court. As per the settled practice, the compensation towards loss of love and affection is enhanced to Rs.80,000/- from Rs.40,000/- to the appellants/claimants and funeral expenses is enhanced to Rs.15,000/- from Rs.10,000/-. The Tribunal has erroneously failed to award any compensation towards loss of estate and they are legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the appellants towards loss of estate.

11. Thus, this Court is inclined to modify the compensation granted by the Tribunal as detailed hereunder:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Dependency	10,92,000/- (Monthly Income Rs.10,000/- + 30% (-) 1/2 deduction (Rs.6,500/- x 12 x 14)	15,12,000/- (Monthly Income Rs.10,000/- + 40% = Rs.14,000/- (-) 1/2 deduction (7000x12x18)=
Loss of Love and affection	40,000/-	80,000/-
Funeral Expenses	10,000/-	15,000/-



C.M.A.No.3570 of 2014

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Estate	Nil	15,000/-
Total	11,42,000/-	16,22,000/-

Accordingly, the appellants/claimants are entitled to a compensation of Rs.16,22,000/- (Rupees sixteen lakhs twenty two thousand only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization and out of the total amount of compensation, the 1st appellant shall receive a sum of Rs.6,22,000/-, the 2nd shall receive a sum Rs.10,00,000/- .

12. In the result,

(i) This appeal is allowed and the third Respondent Insurance Company is directed to deposit the modified award amount i.e, **Rs.16,22,000/-** along with interest at the rate of 7.5% per annum, after deducting the amount already deposited, if any, to the credit of MCOP.No.4285 of 2009 within a period of six weeks from the date of



C.M.A.No.3570 of 2014

receipt of a copy of this Judgment.

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(ii) On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount as per the ratio apportioned by this Court to the bank accounts of the Appellants along with accrued interest through RTGS within a period of two weeks thereafter. No costs.

30.06.2023

Index:Yes/No

Internet:Yes/No

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To

1. The Chief Judge,
Court of Small Causes,
Motor Accidents Claims Tribunal
Chennai.
- 2.The Section Officer
V.R.Section, High Court of Madras.

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C.M.A.No.3570 of 2014

A.A.NAKKIRAN, J.
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C.M.A.No.3570 of 2014

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