IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 929 of 2021

1. S. Sekar
2. S. Divya
3. Minor S. Natarajan ... Appellants / Petitioners

Vs.

1. M. Arun

2. Oriental Insurance Company Limited,
Oriental House, 2nd Floor,
Old No.115, New No.216,
Prakasam Road,
Broadway,
Chennai - 600 108. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 30.09.2019 passed in M.A.C.T.O.P. No.572 of 2017 on the file of the II Special Sub Judge, Motor Accidents Claims Tribunal, Special Sub Court-II, Motor Vehicles Claims Petitions Small Causes, Chennai.

For Appellants	:	M/s. A. Subadra
For R1	:	No Appearance
For R2	:	Mr. G. Anandhan

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants seeking enhancement of compensation awarded in M.A.C.T.O.P. No.572 of 2017, dated 30.09.2019 on the file of the II Special Sub Judge, Motor Accidents Claims Tribunal, Special Sub Court -II, Motor Vehicles Claims Petitions Small Causes, Chennai.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 23.12.2016 at about 20:30 Hours, the deceased Bhuvaneswari was crossing pedestrian cross at Tambaram - Chengalpattu G.S.T. Road, near Shaba Apartments, Guduvancherry, Kanchipuram District, at that time, a motor cycle bearing Registration No.TN-13-F-1685 ridden by its rider in rash and negligent manner, hit on the deceased Bhuvaneswari thereby causing sever head injury and multiple injuries all over her body and she was taken to hospital, and she succumbed to injuries on 24.12.2016. A criminal case was also registered against the rider of the two wheeler in Cr.1097 of 2016 on the file of the Inspector of Police, H-2, Guduvanchery Police Station. For the loss of the deceased Bhuvaneshwari,

the claimants who are the husband, daughter and minor son have come forward with this claim petition seeking enhancement of compensation for a sum of Rs.1,00,00,000/- along with interest under section 166 of Motor Vehicles Act.

4. The first respondent is the owner of the motor cycle bearing Registration No.TN-13-F-1685 has not contested the claim and remained ex-parte. The second respondent - insurance company has filed a counter and denied all the allegation made in the claim petition and contended the accident was happened only due to the negligence on the part of the deceased, who has crossed the road without noticing the traffic. The insurance company also disputed the age, income, occupation of the deceased, also the dependency of the claimants and also contended that the compensation claimed under various heads are on the higher side, prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.2 were examined and Exs.P.1 to P.15 were marked. On the side of the

respondent, no witnesses were examined and Ex.R.1 - Accident Register copy was marked.

6. Based on the evidence placed on record, the Tribunal in point nos.1 and 2, has held that the rash and negligence act on the part of the rider of the two wheeler bearing Registration No.TN-13-F-1685 is responsible for the accident and also held that the second respondent - insurance company is liable to pay the compensation to the claimants.. In point no.3, the Tribunal has quantified and granted compensation for a sum of Rs.32,50,005/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

7. Aggrieved over the quantum of compensation, the claimants have forward with this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimants has submitted that even though, the Tribunal has accepted the avocation and income of the deceased but has not granted the compensation under the head loss of income based on the salary slip instead the Tribunal has fixed

Rs.20,000/- as the notional monthly income of the deceased, which is not permissible, hence, prays to modify the monthly notional income of the deceased as per the salary drawn by the deceased.

9. The learned counsel for the second respondent - insurance company has submitted that the Tribunal has not taken into consideration regarding the reduction of income tax, since the income falls within the income tax limit, hence, prays to deduct the income tax from the salary of the deceased and also contended that the compensation awarded under the head love and affection is on the higher side, hence prays to modify the same.

10. Heard the submissions made on both sides and perused the materials placed on record:

11. The Tribunal based on the evidence placed on record, oral evidence, salary slip, appointment order has accepted the case of the claimants that the deceased was working in a private concern. However, the Tribunal has restricted the salary of the deceased to the extent of Rs.20,000/-

without granting the income based on the salary mentioned in the pay slip. This Court is of the view that the salary received by the deceased under various head are to be taken as income of the deceased but there is no proper reason given by the Tribunal regarding the restriction of the salary of the deceased to Rs.20,000/-, which is not permissible.

12. The Ex.P.7 - salary slip of the deceased, shows that there are certain deductions such as G.P.F., Professional tax of Rs.156/- and on deducting the above deductions, the income of the deceased comes to Rs.24,357/-. The Hon'ble Apex Court judgment in ***Shyamwati Sharma & Ors. Vs. Karam Singh & Ors.*** reported in ***[2010 (12) SCC 378]***, has categorically held that the voluntary contributions made by the deceased for his future welfare shall not be deducted from the gross salary. Hence, this Court is of the view that the professional tax of Rs.156/- and the income tax arrived for the relevant period shall alone be deducted from the gross salary.

(a). Total Taxable Income:

Total Annual Income (24,357/- X 12) = Rs.2,92,284/-

Professional Tax for the year 2016-2017 i.e., (Rs.156/- x 12)	= Rs.1,872/-
Total taxable income (2,92,284 - 1,872)	= **Rs.2,90,412/-**

(b). Tax Calculation for Assessment Year (2016-2017):

Total taxable income	= Rs.2,90,412/-
Tax slab (tax upto Rs.2,50,000/-)	= Nil
Taxable amount	= **Rs.40,412/-**
Surcharge	= Rs.2,021/-
Educational cess (2%)	= Rs.40/-
Higher Educational cess (1%)	= Rs.20/-
Total tax amount (2,021+40+20)	= **Rs.2,081/-**
Total Annual income of the deceased after deduction of tax (2,90,412 - 2,081)	= **Rs.2,88,331/-**

13. The Tribunal has followed the dictum as laid down in ***National Insurance Co. Ltd., vs. Pranay Sethi and other*** reported in ***[2017 (2) TN MAC 609 (SC) : 2017 (16) SCC 680]*** and fixed 25% as future prospectus but on perusal of the Ex.P.7 - salary slip, shows that the date of birth of the deceased is 10.01.1976 and the date of accident is 23.12.2016, thereby the age of the deceased is more than forty years and it is also the fact that the deceased has a permanent income, hence, her future prospectus is modified as 30%.

14. The Tribunal as per the Hon'ble Apex Court judgment in ***Sarla***

Verma and others Vs. ***Delhi Transport Corporation and others*** reported in ***[2009 ACJ 1298 SC : 2009 (6) SCC 121]***, fixed the multiplier as '15' by considering the age of the deceased at the time of the accident, hence this Court finds no infirmity in the above multiplier adopted by the Tribunal and confirms the same. Since, the claimants are three in number, after deducting one-third of her monthly income towards her personal and living expenses, the compensation under loss of dependency with modified annual income Rs.2,88,331/-is assessed as follows:

Annual income after deducting tax	= Rs.2,88,331/-
Future prospects @ 30%	= Rs.86,500/-
Total Amount	= Rs.3,74,831/-
Yearly contribution to his family (deducting 1/3)	= Rs.2,49,887/-
Applicable Multiplier	= 15
Total compensation (Rs.2,49,887/- x 15)	= **Rs.37,48,305/-**

15. The Tribunal has awarded Rs.1,50,000/- towards loss of love and affection and also granted loss of consortium of Rs.40,000 to each of the claimants. The Hon'ble Apex Court judgment in ***Magma General Insurance Co. Ltd., vs Nanu Ram*** reported in ***2018 ACJ 2018,*** has held that compensation awarded under the head loss of consortium includes the loss of love and affection, hence both could not be granted, accordingly, this Court inclined to reject the compensation awarded under the head loss of love and affection and confirms the compensation granted under the head loss of

parental consortium and spouse consortium. Whereas the compensation under conventional heads are concerned, the Tribunal has granted a just compensation and this Court is inclined to confirm the same.

16. Accordingly, the award passed 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 reduced
1.	Loss of dependency	29,50,005/-	37,48,305/-	Enhanced
2.	Spouse consortium	40,000/-	40,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection	1,50,000/-	---	Rejected
6.	Parental consortium	80,000/-	80,000/-	Confirmed
	Total Compensation	32,50,005/-	**38,98,305/-**	**Enhanced**

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.32,50,005/- is hereby enhanced to **Rs.38,98,305/- [Rupees Thirty Eight Lakh Ninety**

Eight Thousand Three Hundred and Five only] together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded 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.A.C.T.O.P.No.572 of 2017 on the file of the II Special Sub Judge, Motor Accidents Claims Tribunal, Motor Vehicles Claims Petitions Small Causes, Chennai. On such deposit, the appellants/ claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn as per the apportionment fixed by the Tribunal. In other aspects, the Order of the Tribunal shall stand confirmed. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

24.11.2023

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

To:

1. The II Special Sub Judge,
   Motor Accidents Claims Tribunal,
   Motor Vehicles Claims Petitions Small Causes,
   Chennai.

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

K. RAJASEKAR, J.

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