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CMA.No. 893 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No. 893 of 2022

1. Roja
2. Minor Beerappan
- [Minor represented by next friend mother Roja]

... Appellants

Versus

1. R. Venkatesh
2. Prakash
3. The Divisional Manager
Oriental Insurance Company Limited
Divisional Office
No. 25/C, Arunagiri Complex
Ground Floor, By Pass Road
Hosur-635 109.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree dated 21.02.2018 made in M.C.O.P.No. 303 of 2017, on the file of Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

For Appellants	:	Mr. S.P. Yuaraj
For RR 1 & 2	:	No Appearance
For R3	:	Mr.J. Chandran



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JUDGMENT

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The appeal is filed by the claimants seeking enhancement of compensation.

2. According to the claimants, on 06.03.2015, when the deceased, namely, Sidhappan was riding his two wheeler along with one Rajammal as pillion rider bearing Registration No. TN-29-AU-5587, the driver of the Renault Logan Car bearing Registration No.TN-70-B-1932 belonging to the 2nd respondent and insured with the 3rd respondent drove the vehicle in a rash and negligent manner and hit against the vehicle of the deceased. Due to the impact, the deceased died on the spot with severe head injuries. The deceased was a flower vendor and earning a sum of Rs.15,000/- per month and the claimants, therefore filed a claim petition claiming a sum of Rs.25,00,000/- as compensation.

3. The respondents 1 and 2 remained ex-parte before the Tribunal, and the claim petition was contested by the third respondent/Insurance Company. The 3rd respondent filed a detailed counter denying all the averments made in the claim petition, apart from disputing the negligence,



liability as well as the quantum of compensation.

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4. Before the Claims Tribunal, the first claimant examined herself as P.W.1, and one another witness was examined as P.W.2. and Ex.P.1 to Ex.P.10 were marked in support of the claimants. On the side of the respondents, neither oral nor documentary evidence was adduced.

5. The Claims Tribunal, on an assessment of the entire evidence on record, rendered a finding of negligence against the second respondent and awarded a sum of Rs.13,30,000/- as compensation along with 7.5% interest. Aggrieved by the quantum of compensation and not satisfied with the amount awarded by the Claims Tribunal, the claimants have filed the above appeal for enhancement of compensation.

6. The learned counsel for the appellants submitted that the Tribunal assessed the income at Rs.9,000/- per month which is very much on the lower side. The learned counsel further submitted that the Tribunal failed to award any compensation for the minor son of the deceased towards "loss of consortium".



7. The learned counsel for the third respondent/Insurance Company on the other hand, submitted that the award of the Tribunal was just, fair and reasonable and did not call for any interference in the appeal.

8. I have heard both the learned counsels and perused the materials available on record.

9. It is seen that the deceased was 43 years at the time of accident and he was working as wholesale flower vendor and earning a sum of Rs.15,000/- per month. There is no evidence to support the income of the deceased. Considering the fact that the accident took place in the year 2015 and that the deceased was aged about 43 years and was flower vendor, this Court is of the view that the income of the deceased at Rs.9,000/- per month is very much on the lower side and therefore, the notional income is now fixed at Rs.12,000/- per month. 25% is added future prospects and 1/3 is deducted towards personal expenses of the deceased and the loss of dependency is assessed at Rs.16,80,000/-. The Claims Tribunal failed to award any compensation towards “loss of consortium” to the minor son of the deceased and therefore, Rs.40,000/- is awarded towards “Loss of



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Consortium” to the minor son of the deceased.

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10. In view of the above discussion, the award of the Tribunal is modified as follows:-

<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Loss of dependency	Rs.12,60,000	Rs.16,80,000
2.	Loss of consortium	Rs.40,000	Rs.80,000
3.	Loss of Estate	Rs.15,000	Rs.15,000
4.	Funeral Expenses	Rs15,000	Rs.15,000
5.	Total	Rs.13,30,000	Rs.17,90,000

= Rs. 12,000 - Rs.4,000/- (1/3 Personal Expenses) = Rs.8,000/-
= Rs.8,000 + Rs.2,000/- (25% future prospects) = Rs.10,000/-
= Rs.10,000/- x 12 x 14 = Rs.16,80,000/= Loss of Dependency.

11. The claimants are entitled to a total compensation of Rs.17,90,000/- along with 7.5% interest from the date of claim petition till the date of realization. The third respondent/Insurance Company is directed to deposit the enhanced compensation of Rs.4,60,000/- along with 7.5% interest within a period of 8 weeks from the date of receipt of a copy of this order, less the amount, if any, already deposited before the Tribunal.



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12. It is submitted by the learned counsel for the appellants that the above appeal was filed with a delay of 628 days and the delay was condoned on condition of forfeiture of interest for the delay period. It is, therefore, made clear that the appellants are not entitled to interest for the delay period of 628 days. On such deposit being made by the third respondent/Insurance Company, the first claimant is entitled to withdraw her share in respect of compensation along with accrued interest and the second claimant's minor share shall be kept in cumulative fixed deposit in any of the Nationalized Banks till the minor attains majority.

13. The appeal is accordingly partly allowed. There shall be no order as to costs.

07.06.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

MSM

To

1.The Special District Court,
Motor Accidents Claims Tribunal, Krishnagiri.

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



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N.MALA.J.,

msm

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