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C.M.A.No.2438 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.2438 of 2023

1.Sampooranam

2.Minor Dharani (12 years)

3.Minor Gowsik (9 years)

[Minor petitioners 2 & 3 are represented by
their next friend / guardian Mother Sampooranam]

..... Appellants / Petitioners

Vs

1.Raja

2.Palanivel

3.The United India Insurance Co. Ltd.,

No.225, TNA Complex

Salem Road, Tiruchengode.

..... Respondents / Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 praying to allow the above appeal and enhance the award amount in the order dated 04.11.2022, made in MCOP.No.554 of 2021 on the file of the Motor Accident Claims Tribunal / Special District Judge Court, Salem.



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For Appellants : Mr.T.S.Arthanareeswaran

For Respondents : Ms.I.Malar for R3
R1 & R2 - Dispensed with vide order
dated 11.10.2023

JUDGMENT

The claimants in MCOP.No.554 of 2021 before the Motor Accident Claims Tribunal (Special District Court), Salem are the appellants herein.

2. On 18.08.2020, at around 6.15 a.m., a certain Vasudevan was fatally knocked down by a motorcycle bearing registration No.TN34-X-5251, belonging to the second respondent and driven by the first respondent from behind. The accident had taken place before a certain Abi Tea Stall on Tiruchengode - Salem Main Road. Soon after the accident, the victim was removed to the hospital where he died later in the day at around 10.00 a.m., An employee of the tea stall informed the police, and Ext.P1, FIR came to be registered in Cr.No.1325/2020 by Tiruchengode Town P.S., Namakkal District.

3. Seeking compensation, the dependants of the victim (his wife and two



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minor children) moved the Tribunal. Before the Tribunal, none of the respondents including the insurance company of the offending motorcycle appeared, and they were promptly set exparte by the Tribunal. After holding enquiry into the claim, the Tribunal passed an award for Rs.5,33,000/-, and the break-up is as below :

<i>Sl.No.</i>	<i>Heads of Compensation</i>	<i>Award of Tribunal (Rs.)</i>
1.	Loss of income	4,48,000.00
2.	Loss of love and affection (Rs.20,000/- x 3)	60,000.00
3.	Funeral expenses	25,000.00
Total :		5,33,000.00

4. It may be stated that as per the claim petition, the victim of the accident was working in a tea stall as a tea master, and was 55 years old at that relevant time. The Tribunal however has reckoned his monthly income notionally at Rs.8,000/-, applying 7 as a multiplier, and deducted 1/3rd towards the personal expenses of the victim, it arrived at the compensation on the head of loss of dependency at Rs.4,48,000/-. This is now under challenge.

5. The learned counsel for the appellants made the following submissions :



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- a) the notional income as fixed by the Tribunal is unrealistically low;
- b) Vide Ext.P2, postmortem certificate gives the age of the victim at 50 years, the Tribunal has reckoned it with 60 years with no rational basis;
- c) the Tribunal has not granted anything for future prospects, because it treated that the victim was aged 60 years;
- d) that the Tribunal has not awarded appropriately for loss of love and affection, transportation charges, pain and suffering, and loss of estate. They have to be reasonably compensated.

6. Per contra, the counsel for the third respondent-insurance company submitted that even though the insurance company did not contest the matter, it still likes to place two pointed arguments. They are :

- a) that according to the claim petition, the age of the victim was 55 years, whereas in the postmortem certificate, it is noted as 50 years; and there is difference both in the choice of multiplier and the sum to be awarded for future prospects;



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- b) since the insurance company did not participate in the proceedings, it may be given an opportunity to ascertain if there could be a case for pay and recover.

7. The submissions of both sides are carefully weighed. When the claimants themselves have stated that the victim was 55 years old at that relevant time, and when they chose not to produce any documentary evidence to show the age, it is only appropriate for this Court to reckon the age of the victim as 55 years rather than leaning on the approximate age given in the postmortem certificate nor would lean on 66 years arbitrarily fixed by the Tribunal. Turning to the monthly income, it is inconceivable that somebody could be making less than Rs.15,000/- per month to support a family in 2020. This Court therefore reckons the monthly income at Rs.15,000/-. To this, this Court adds 10% towards future prospects, and applies 11 as a multiplier and deducts 1/3rd towards the personal expenditure of the victim, and arrives at Rs.14,52,000/- as the net value of loss of dependency. As regards other conventional heads of compensation, this Court finds that the amount awarded for loss of love and affection bears little relevance to the law laid by



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the Hon'ble Supreme Court. This Court, therefore chooses to interfere with the same appropriately, and they are indicated as below :

<i>Sl.No.</i>	<i>Heads of Compensation</i>	<i>Revised Award (Rs.)</i>
1	Loss of dependency	14,52,000.00
2	Loss of love and affection	1,32,000.00
3	Transportation charges	10,000.00
4	Pain and suffering	10,000.00
5	Funeral expenses	25,000.00
6	Loss to estate	15,000.00
7	Loss of amenities	15,000.00
Total :		16,59,000.00

8. To conclude, this appeal is allowed and the compensation amount awarded by the Tribunal is enhanced from Rs.5,33,000/- to Rs.16,59,000/-. The third respondent is required to deposit the said sum with interest at 7.5% per annum less (a) any amount which has been already deposited; and (b) interest payable for 23 delay in filing the appeal, within a period of six weeks from the date of receipt of a copy of this order. The enhanced portion of the compensation is directed to be shared in the same ratio which the Tribunal has apportioned the compensation as between the claimants. The appellants are required to pay the additional court fee on the enhanced amount, if it is required to be so paid.



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9. Having stated thus, this Court chooses to remand the matter back to the Tribunal for leading evidence only for the limited purpose of ascertaining whether the third respondent-insurance company is entitled to pay and recover. It is made clear, the ground for remand is only for this limited purpose and it has little to do with their obligation to deposit the sum herein awarded. It is also underscored that this limited area for remand will also not affect the right of the claimants to seek withdrawal of the sum deposited or to be deposited by the insurance company. And the Tribunal is further informed that the pendency of the matter pursuant to remand shall not be a ground for denying or delaying the withdrawal of the sum by the claimants if they otherwise are entitled to as per law. No costs.

14.12.2023

Index : Yes / No

Speaking order / Non-speaking order
ds

To:

1. The Special District Judge
Motor Accident Claims Tribunal
Salem.

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



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N.SESHASAYEE.J.,

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