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C.M.A.No.3533 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.3533 of 2021

1. P. Thamizhmani

2. Minor Monika

[Minor appellant represented by her
mother, 1st appellant herein]

... Appellants/Petitioners

Vs.

1. J. Vinoth Kumar

2. The Divisional Manager,
United India Insurance Company Ltd.,
Door No.13A, Nethaji Road,
Cuddalore 607 001.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 19.01.2016 made in M.C.O.P.No.369 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Cuddalore.

For Appellants : M/s. Ramya V. Rao

For R2 : Mr. D. Baskaran



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants seeking quantum of compensation awarded in M.C.O.P. No.369 of 2015, dated 09.01.2016 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

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

3. The petitioners are the wife and minor children of the deceased Pandiyarajan @ Pandiyaraj @ Sathyaraj, who died in a road accident, dated 02.11.2014. The Claims Tribunal after accepting the claim petition filed by the claimants awarded compensation of Rs.9,90,000/- by invoking Section 166 of the Motor Vehicles Act.

4. The only grievance raised in this appeal is that the notional income fixed for the deceased is not in accordance with the norms followed by this Court and eventhough the deceased herein viz., Pandiyarajan @ Pandiyaraj @ Sathyaraj is a checker and Cleaner at Radhi Meena Bus



Service, the notional income fixed by the Tribunal for awarding compensation needs to be enhanced.

5. The learned counsel for the respondent has opposed for enhancement of compensation on the ground that the Tribunal after considering the evidences placed on record and since no income proof has been produced, the Tribunal has rightly fixed the quantum of compensation.

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

7. It is true that the claimants were not able to prove the monthly income of the deceased by producing necessary documents in support the income of the deceased. The Tribunal has taken note of the evidence of P.W.1 that the deceased was working as Checker and Cleaner in Radhi Meena Bus Service, fixed the notional income of the deceased as Rs.6,000/- per month. This Court consistently following the Division Bench Judgment of this Court in *Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]* by adopting the cost of index, fixed the



notional income of the person who were not able to prove the income.

Admittedly, in this case, the deceased was aged about 28 years at the time of accident and was Checker and Cleaner, the income fixed as Rs.14,093/- and the same is calculated as follows:

Date of accident = 02.11.2014

Cost of Inflation index = 240 (Financial Year 2014-2015)

Notional income of the deceased = $(6500 \times 240) / (129)$
(calculation based on the based
year of 2008 and minimum wages) = Rs.12,093/- @ Rs.12,000/-

9. The Tribunal has not awarded any amount towards future prospects and as per the Judgment of the Hon'ble Apex Court in ***National Insurance Co. Ltd., vs. Pranay Sethi and other [2017 (2) TN MAC 609 (SC) : 2017 (16) SCC 680]*** 40% future prospectus to be added. The Tribunal has rightly applied multiplier '17' as per the Judgment of the Hon'ble Apex Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]***, by considering the age of the deceased is 28 years at the time of the accident. The dependants of the deceased are two in number hence deduction of 1/3rd made towards his personal expenses. Hence loss of dependency is assessed



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as follows:

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Annual income (Rs.12,000/- x 12)	= Rs.1,44,000/-
add Future prospects @ 40%	= Rs.57,600/-
Yearly income of the deceased	= Rs.2,01,600/-
Yearly contribution to his family (deduction of 1/3 = Rs.67,200/-)	= Rs.1,34,400/-
Applicable Multiplier '14' (Rs.1,63,822 x 14)	
Total Loss of dependency	= Rs.22,84,800/-

10. The Tribunal has also awarded Rs.50,000/- each separately under the head loss of love and affection and awarded a sum of Rs.50,000/- under the head loss of consortium. As per the Hon'ble Apex Court in ***United India Insurance Co., Limited vs. Satinder Kaur and Ors.*** [MANU/SC/0500/2020 : (2021) 11 SCC 780] and ***Magma General Insurance Co. Ltd., vs. Nanu Ram*** [2018 ACJ 2018], each claimants are entitled to get Rs.40,000/- under the head of loss of consortium, since loss of love and affection included in loss of consortium. The Tribunal has awarded a sum of Rs.25,000/- under the head funeral expenses and the same is reduced to Rs.15,000/-. The Tribunal has not awarded any amount for the head loss of estate and this Court is inclined to award a sum of Rs.15,000/- under the head loss of estate.

11. 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
1.	Total loss of dependency	Rs.8,16,000/-	Rs.22,84,800/-	Enhanced
2.	Loss of Love and affection	Rs.1,00,000/-	---	Rejected
3.	Loss of Consortium	Rs.50,000/-	Rs.80,000/-	Enhanced
4.	Funeral Expenses	Rs.25,000/-	Rs.15,000/-	Reduced
5.	Loss of Estate	---	Rs.15,000/-	Awarded
	Total Compensation	Rs.9,91,000/- @ Rs.9,90,000/-	Rs.23,94,800/ -	Enhanced by Rs.14,04,800/ -

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,90,000/- is hereby enhanced to Rs.23,94,800/- [Rupees Twenty Three Lakhs Ninety Four Thousand and Eight Hundred only] 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 now 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



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credit of M.C.O.P.No.369 of 2015 on the file of the Motor Accidents Claims

Tribunal, Principal District Court, Cuddalore. On such deposit, the 1st appellant is 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. The Tribunal shall disburse the share amount of the 1st claimant now awarded by this Court by directly giving credit to the Savings Bank Account of the 1st claimant. The share of the minor appellant is directed to be deposited in any one of the Nationalized Bank till the minor appellant attains majority. On such deposit, the first appellant being the mother of the minor appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellant. 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.

14.12.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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K.RAJASEKAR,J.

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To:

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Cuddalore.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

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