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C.M.A.No.85 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.85 of 2021

1. A.Narayani
2. Suganya (Minor)
3. A.Mohanasundaram (Minor)

(2nd and 3rd petitioners Rep. by their
Mother & NF by 1st petitioner)

...Appellants

Vs.

1. G.Prashanth
2. Reliance General insurance Co. Ltd.,
Plot No.2054, 2nd Floor,
Anna Nagar, 2nd Floor,
Anna Nagar, 2nd Avenue,
Chennai – 600 040.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the award and decree passed by the Motor Accidents Claims Tribunal/2nd Small Causes Court, Chennai in M.C.O.P.No. 4480 of 2015 dated 05.04.2019 awarding Rs.16,89,000/- insofar as compensation is concerned.



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For Appellants : Mr.R.Ramesh

For Respondents : Mr.P.Suresh Srinivasan, for R2

JUDGEMENT

Challenging the judgment and decree dated 05.04.2019 passed in MCOP.No.4480 of 2015 on the file of the Motor Accidents Claims Tribunal/ 2nd Small Causes Court, Chennai, the claimants are before this Court.

2. The case of the appellants is that, on 29.03.2015 at about 08.10 hrs., when the deceased Ananthababu was riding a Motor cycle bearing Regn.No. TN-10-AD-5748, the rider of the motor cycle bearing Regn.No.TN-12-E-0100, owned by the 1st respondent, insured with the 2nd respondent, came in the opposite direction in a rash and negligent manner and hit against the motor cycle of the deceased, as a result of which, the deceased sustained grievous injuries all over his body and got admitted in the hospital, however, subsequently, he passed away on 30.03.2015. Thereby, the appellants herein along with the mother of the deceased filed a claim petition claiming a sum of



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Rs.50,00,000/-. After contest, the Tribunal, vide impugned decree awarded a compensation of Rs.16,89,000/-. Aggrieved with the said order, the present appeal has been filed by the claimants seeking enhancement of the compensation fixed.

3. Learned counsel appearing for the appellants submitted that admittedly, the above said accident occurred solely due to the rash and negligent driving of the driver of the 1st respondent vehicle, due to which, the husband of the 1st and father of the 2nd and 3rd appellants lost his life and for the said accident, an FIR also came to be registered as against the driver of the 1st respondent vehicle. Further, though the accident is of the year 2015 and the appellants have specifically averred that the deceased was a Compounder at R.K. Clinic and was earning a sum of Rs.25,000/- per month at the time of accident and have also examined the Manager of the Ark veterinary Clinic as PW3 and marked salary certificate as Ex.16 to prove the same, however, without considering the same, the Tribunal had taken the monthly income of the deceased as Rs.9,000/- only, which is on the lower side and the same requires to be reconsidered by this Court. That apart, the amount awarded



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under the head of loss of love and affection was also on the lower side and was not in consonance with the judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay sethi and others reported in 2017 (16) Supreme Court Cases 680*. Accordingly, he prays for appropriate enhancement in favour of the appellants.

4. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

5. Heard the learned counsel for the appellants and the learned counsel appearing for the 2nd respondent and perused the materials available on record.

6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of



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the appellants / claimants is with regard to the quantum of compensation

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awarded. It is claimed by the appellants that the deceased was working as a Compounder at R.K. Clinic and was earning a sum of Rs.25,000/- per month at the time of accident, however, without considering the same, the Tribunal has fixed the notional income at Rs.9,000/-. It has been the view of the courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, fixing a notional income of Rs.13,000/- and adding future prospects at 25%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.16,250/-. Deducting 1/4th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.12,187.50/- per month and the deceased being aged about 40 years, as evidenced from the



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records, adopting the multiplier of 15 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in *(2009) 6 SCC 121*, the loss of income to the family is arrived at Rs.12,187.50/- * 12 * 15 = Rs.21,93,750/, which is worked out as follows :-

Loss of Income	Amount (in Rs.)
Notional income (Per month)	13,000
Add: Future Prospects (Rs.13,000 x 25%) (Per month)	3,250
	16,250
Less: Personal expenses (1/4 th) (Rs.16,250/-x1/4) (Per month)	4,062.50
	12,187.50
Notional income (per annum) (Rs.12,187.50/- x 12)	1,46,250
Multiplier	15
Total	21,93,750

7. A sum of Rs.50,000/-each has been granted to the 2nd and 3rd appellants alone under the head of "loss of love and affection", which is modified to a sum of Rs.40,000/- each to the claimant 2 to 4.

8. In the above circumstances, the compensation awarded by the



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Tribunal is modified as under :-

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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of Income	15,18,750/-	21,93,750/- (enhanced)
Loss of love and affection (Rs.40,000/- x 3)	1,00,000/-	1,20,000/- (enhanced)
Loss of consortium	40,000/-	40,000/-
Funeral Expenses	15,000/-	15,000/-
Loss of estate	15,000/-	15,000/-
Total	16,88,750/- Round off to 16,89,000/-	23,83,750/-

9. When the claim petition was filed in the year 2015, the 2nd appellant was aged about 17 years and the 3rd appellant was aged about 16 years. Now, the 2nd appellant should be aged about 25 years and the 3rd appellant should be aged about 24 years and are therefore, major. Though no application has been taken out to declare them as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the 2nd and 3rd appellants as major and discharges their guardian M/s.A.Narayani from the guardianship. The Registry shall carry out the



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necessary amendments.

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10. The appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.16,89,000/-** to **Rs.23,83,750/-**. The 2nd respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.4480 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. The said award amount shall be apportioned amongst the appellants/claimants as per the Award of the Tribunal. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellants through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants. There shall be no order as to costs in the present appeal.

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Index

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

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To

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



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M.DHANDAPANI, J.

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