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C.M.A.No.1865 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.1865 of 2021

1. S. Santhi
2. K. Santhanam ... Appellants/Petitioners
Vs.

1. S. Selva Vinayagam
[R1 remained ex-parte before Tribunal.
Hence notice to R1 dispensed with]

2. The Future General India Insurance Company Limited,
1st, 2nd and 3rd Floor, Plot No.55,
Vijayaraghava Road,
T.Nagar, Chennai – 600 017. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 03.01.2020 made in M.C.O.P.No.256 of 2015 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Thiruvallur at Poonamallee.

For Appellants : M/s. Sunithi Abi Rami
For M/s. M. Malar
For R1 : Ex-parte
For R2 : Mr. M. B. Raghavan



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JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimants seeking for enhancement of compensation against the Award passed in M.C.O.P.No.256 of 2015, dated 03.01.2020, on the file of the Motor Accident Claims Tribunal, II Additional District Court, Thiruvallur at Poonamallee.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimants in brief is that on 01.04.2015 at about 9.00 hours while the deceased herein, namely, S.Prakash was riding his motorcycle bearing Registration No.TN 05 AB 8680 on Ambattur Estate, III Main Road, in front of Ganesan Heavy Industries Company, a Van bearing Registration No.TN 20 AJ 3947 came in the same direction in rash and negligent manner and hit the deceased resulting which, the deceased sustained fatal injuries and succumbed to death on the spot. Hence the dependants of the deceased have filed claim petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.20,00,000/- for the death of their son namely S.Prakash.



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4. The respondent filed counter and contended that the accident had occurred only due to the negligent act of the rider of the motorcycle i.e., the deceased herein and the driver of the Van drove it with due care and caution. Hence the Insurance Company is not liable to pay any compensation to the claimants. They have also disputed the dependency, age, avocation and income of the deceased and also the compensation claimed by the claimants is on the higher side. Hence prays to dismiss the claim.

5. Based on the evidences placed on record, the Tribunal has quantified the compensation and awarded a sum of Rs.14,30,800/- as compensation along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

6. Aggrieved over the quantum of compensation awarded, the claimants have come out with this appeal seeking enhancement of compensation. The Insurance Company has not filed any appeal as against the award.

7. The only point arises for consideration in this appeal is that the quantum of compensation awarded under the head loss of income and



loss of consortium is proper or not.

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

9. The Tribunal, in its award has held that the claimants have not proved the income of the deceased herein and the education qualification of the deceased. The Tribunal, fixed the notional income of Rs.9,000/- and awarded compensation. The deceased herein is aged about 24 years and was working as Supervisor in Sun Tools Private Company but no documents produced to substantiate the same and the accident had taken place in the year 2015, fixing a sum of Rs.12,000/- as the notional income of the deceased is proper, by 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.

10. The accident had taken place in the year 2015, a sum of Rs.12,000/- is fixed for the notional income of the deceased and considering



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the age of the deceased, S.Prakash is 24 years at the time of accident multiplier '18' is adopted and his avocation as a Supervisor, 40% awarded as future prospects and the deceased is a bachelor, hence 50% deducted towards his personal expenses. Accordingly, the following calculations have been made:

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 1/2)	= Rs.1,00,800/-
Applicable Multiplier '18'	
Total Loss of dependency	= Rs.18,14,400/-

11. The Tribunal has awarded compensation of Rs.40,000/- under the head loss of consortium only for the first claimant being the mother of the deceased. All the dependants of the deceased are entitled for compensation under the head loss of consortium as per the Judgment of the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs. Nanu Ram and Others [2018 (18) SCC 130]***. Accordingly, a sum of Rs.80,000/- awarded under the head loss of consortium. The Tribunal has rightly awarded a sum of Rs.15,000/- each compensation under the head loss of



estate and funeral expenses and this Court is of the view the same are just and reasonable and the same are hereby confirmed.

12. 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.	Loss of Income	Rs.13,60,800/-	Rs.18,14,400/-	Enhanced
2.	Loss of Consortium to 1 st petitioner/Loss of consortium	Rs.40,000/-	Rs.80,000/-	Enhanced
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000	Confirmed
4	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
	Total Compensation	Rs.14,30,800/-	Rs.19,24,400/-	Enhanced by Rs.4,93,600/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.14,30,800/- is hereby enhanced to Rs.19,24,400/- [Rupees Nineteen Lakhs Twenty Four Thousand and Four Hundred only] together 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 award amount, now determined by this



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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.C.O.P.No.256 of 2015, on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Thiruvallur at Poonamallee. On such deposit, the appellants/claimants are entitled to withdraw the award amount, now awarded by this Court along with interest and costs, as per the apportionment fixed by the Tribunal, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants without any formal application. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

20.12.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The II Additional District Judge,
Motor Accidents Claims Tribunal,
Thiruvallur at Poonamallee.
2. The Section Officer,
V.R.Section,



High Court,
Chennai.

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K.RAJASEKAR,J.

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