



C.M.A.No.3371 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.3371 of 2021

1. K. Chitra
2. L. Kannan

... Appellants/Petitioners

Vs.

1. Rajalakshmi Engineering College,
Rajalakshmi Nagar,
Sriperumbudur District,
Kancheepuram District. 602 105.

2. ICICI Lombard General Insurance Company Ltd.,
Arihant Plaza, 1st Floor,
No.84 & 85, Wall Tax Road,
Chennai – 600 003.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 31.03.2021 made in M.C.O.P.No.7453 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

For Appellants : Mr. G. Balaji Prasad
For Respondents : Mr. S. Siva Kollappan



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimants seeking for enhancement of compensation against the Award passed in M.C.O.P.No.7453 of 2017, dated 31.03.2021, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai, for the death of their daughter in the road accident.

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

3. The case of the claimants are that on 31.07.2017 at about 14.15.hours, the deceased Akshita, the daughter of the petitioners was riding a motorcycle bearing Registration No. TN 10 A 8790 from Vadapalani towards Kodambakkam while she reached in front of Mangaldeep Opticals on Arcot Road, the driver of the College Bus bearing Registration No.TN 87 0466 came behind her in rash and negligent manner and dashed against her resulting which, the deceased sustained fatal injuries and succumbed on the way to hospital. The deceased was aged about 19 years and was studying B.Sc., Visual Communication at Shri Shankarlal Sundarbai Shasun Jain



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College for Women, at Chennai. In this regard, a criminal case was also registered against the driver of the bus in Crime No.208 of 2017 under Sections 279 and 304 A IPC on the file of the Pondy Bazaar Police Station.

4. The first respondent has not contested the claim and was remained ex-parte. The second respondent has contested the claim filed counter and contended that the rider of the two-wheeler has negligently drove it and met with an accident. Hence the Insurance Company is not liable to pay any compensation to the claimants. They have also disputed the Education qualification of the deceased and quantum of compensation claimed by the claimants. Hence, prays to dismiss the appeal.

5. Based on the evidences placed on record, the Tribunal has quantified the compensation and awarded a sum of Rs.23,53,000/- as compensation along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation.

6. Aggrieved over the quantum of compensation awarded, the claimants have come out with this appeal seeking enhancement of compensation.



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7. The learned counsel for the claimants submitted that the notional income fixed by the Tribunal is not in accordance with the norms followed by this Court for the accident occurred in the year 2017. In this case, the age of the deceased is 19 years and the Tribunal has awarded Rs.15,000/- as notional income which is on the lower side hence prays to enhance the award. He has also contended that the compensation awarded under various other heads are also on the lower side and prays to revise the same.

8. The learned counsel for the Insurance Company has vehemently contended that the Tribunal has fixed the quantum of compensation based on the evidences placed on record and the Tribunal has awarded compensation under various other heads are also just, proper and reasonable and no need for revised of the same. Hence prays to dismiss the appeal.

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

10. Before the Tribunal, the claimants have marked ID Card,



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Condolence Letter and Bonafide Certificate issued by Shri Shankarlal Sundarbai Shasun Jain College for Women, at Chennai, to show that the deceased herein was studied Ist year B.Sc., Visual Communication. It is also the evidence of P.W.1 that his daughter was a brilliant student and after completing B.Sc., with high marks, she has joined M.Sc., and she was the only breadwinner of the family. However, there is no evidence to show that the deceased was doing any avocation and any document to prove the income of the deceased. Based on the evidences placed on record, the Tribunal has fixed the notional income of the deceased as Rs.15,000/- per month. This Court is of the view that since the deceased was a Ist Year student and considering the date of accident, fixing the notional income of the deceased as Rs.18,000/- per month would be appropriate as per the judgment of this Court in ***Maheshwari vs. T.V.Tamilselvi [2021 (1) TNMAC 800]***. Accordingly, this Court fix the notional income of the deceased as Rs.18,000/- per month.

11. As per the Judgment of the Hon'ble Apex Court in ***National Insurance Company Ltd., vs. Pranay Sethi and others [2017 (16) SCC 680]***, the Tribunal awarded 40% future prospects and the deceased is being



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unmarried 50% to be deducted as personal and living expenses. The age of the deceased at the time of accident is about 19 years, the Tribunal has properly applied multiplier '18' as per the Judgment of the Hon'ble Apex Court in ***Sarla Verma and Others vs. Delhi Transport Corporation and Another [2009 (2) TNMAC 1 SC : 2009 (6) SCC 121]***. Accordingly, the loss of income arrived at Rs.27,21,600/- {[18,000 + 7200 (40% of 18000)] = 25200 x 12 x 18 x 1/2]}.

12. The Tribunal has also awarded Rs.50,000/- separately under the head loss of love and affection and this Court is of the view that the same needs to be modified. The Judgment of the Hon'ble Apex Court in ***Pranay Sethi and others*** case cited above, the compensation under the head of loss of consortium to be awarded to the each claimants instead of awarding compensation under the head loss of love and affection and hence the head loss of love and affection is hereby modified to the head loss of consortium. As far as the compensation awarded under other heads are concerned, the Tribunal has awarded just and reasonable compensation and there is no need for interference of this Court.



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13. 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.22,68,000/-	Rs.27,21,600/-	Enhanced
2.	Loss of Love and affection/Loss of Consortium	Rs.50,000/-	Rs.80,000/-	Modified
3.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Transport Charges	Rs.5,000/-	Rs.5,000/-	Confirmed
5.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
	Total Compensation	Rs.23,53,000/-	Rs.28,36,600/- -	Enhanced by Rs.4,83,600/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.23,53,000/- is hereby enhanced to Rs.28,36,600/- [Rupees Twenty Eight Lakhs Thirty Six Thousand and Six 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. The second respondent/Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, if any, excluding the default period



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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.7453 of 2017, on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai. On such deposit, the appellants/claimants are permitted to withdraw the amount, now awarded by this Court, along with interest and costs, 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 claimant, without any formal application. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee on the enhanced compensation. In other aspects, the award of the Tribunal shall stands confirmed. 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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To:

1. The Special Sub Judge No.1,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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K.RAJASEKAR,J.

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