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C.M.A. No. 2237 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2237 of 2023

Govindasamy (Died)

Kavitha

... Appellant

Vs.

1.K. Kumar

2.New India Assurance Co. Ltd.,
Paramathy Road, Namakkal Town.

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.2022 made in MCOP. No.692 of 2013 on the file of Motor Accident Claims Tribunal / Additional District Court at Namakkal.

For Appellant : Mr. M. Lokesh

For Respondents : Mr. A. Salomi, for R2
R1 – Ex parte



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J U D G M E N T

WEB COPY This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation granted by the Tribunal in the award dated 22.09.2022, made in M.C.O.P. No.692 of 2013 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2. The appellant along with her husband filed a claim petition stating that their son aged 6 years while travelling in two wheeler on 24.06.2012 at about 3.00 pm ridden by the husband of the appellant, the driver of the mini bus insured with the second respondent herein came in a rash and negligent manner and dashed against the vehicle in which the deceased travelled, as a result of which he sustained fatal injuries.

3. The claim petition was tried along with two other claim petitions. The appellant herein examined herself as PW.1 and marked Ex.P1 to Ex.P15. The second respondent examined RW.1 and RW.2 and marked Ex.R1. Further, Ex.X1 and Ex.X2 were also marked as witness documents.



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4. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a total compensation of Rs.5 lakhs to the appellant.

5. The learned counsel for the appellant submitted that the income fixed by the Tribunal at Rs.30,000/- per annum is meagre and prayed for enhancement. Further, the Tribunal had not granted any compensation under the head loss of estate and funeral expenses.

6. Since R1 remained ex parte before the Tribunal, the learned counsel for the appellant made an endorsement to dispense with notice to the first respondent.

7. The learned counsel for the second respondent per contra submitted that the award of the Tribunal is just and reasonable and no interference is called for. Hence, the learned counsel prayed for dismissal of the appeal.



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8. On perusal of the records, it is seen that the deceased was aged 6 years at the time of accident. The notional income fixed by the Tribunal at Rs.30,000/- per annum is meagre. The learned counsel for the appellant relied upon the judgment of this Court in ***J.Kanagaraj and other vs. Metropolitan Transport Corporation Ltd.,*** reported in ***2017 (2) TN MAC 702*** in support of the submission that Rs.60,000/- per annum can be fixed as annual income. This Court is of the view that fixation of income will depend on facts and circumstances of each case. In the facts, it would be just and reasonable to fix Rs.45,000/- per annum as notional annual income of the deceased. The multiplier applicable is '15'. Hence, the appellant is entitled to Rs.6,75,000/- under the head loss of dependency. Though the first claimant is no more, the surviving appellant-parent (mother) is entitled to compensation under the head Filial consortium at Rs.80,000/- as the father who was alive on the date of claim petition was also entitled to filial consortium and the same is enhanced to Rs.80,000/-. The appellant is also entitled to award of compensation under the head loss of estate at Rs.15,000/- and funeral expenses at Rs.15,000/-. Thus, the compensation awarded by the Tribunal is enhanced from Rs.5,00,000/- to Rs.7,85,000/-, break-up is as follows -



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	4,50,000/-	6,75,000/-	Enhanced
2.	<u>Conventional heads</u> i) Loss of loss and affection ii) Funeral expenses	50,000/-		Set aside
3.	Filial consortium	-	80,000/-	Awarded
4.	Loss of estate	-	15,000/-	Awarded
	Funeral expenses		15,000/-	Awarded
	Total	5,00,000/-	7,85,000/-	Enhanced by Rs.2,85,000/-

The finding of the Tribunal directing the second respondent to pay and recover the compensation from the first respondent is confirmed.

9. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,00,000/- is hereby enhanced to Rs.7,85,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit. It is made



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clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.2,85,000/- enhanced by this Court as per the order of this Court dated 07.09.2023 made in C.M.P.No.18399 of 2023 in C.M.A.SR.No.102632 of 2023. The second respondent is directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment at the first instance and recover the same from the first respondent. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

20.09.2023

Index: Yes/No

Neutral Citation: Yes / No

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SUNDER MOHAN, J.

AT

To

- 1.The Motor Accident Claims Tribunal,
Additional District Court at Namakkal.
- 2.The Section Officer,
VR Section,
High Court, Madras.

C.M.A.No.2237 of 2023

20.09.2023