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C.M.A.No. 4431 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2023

CORAM:

THE HON'BLE Mr. JUSTICE A.A.NAKKIRAN

C.M.A.No.4431 of 2019

1. Kalaivani

2. Ashok @ Ashok kumar
Appellants

...

Vs.

1. S.John Vedamuthu

2. M/s.New India Assurance Company Limited,
Opposite to Saradha Lodge,
G.S.T.Road,
Chengalpattu Town 603 001,
Kancheepuram District.

(No relief sought against the first respondent
Hence notice may be dispensed with)

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the decree and judgment dated 26.04.2016 made in M.C.O.P.No.38 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Chengalpattu, Kancheepuram District.



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For Appellant : Mr.M.Sivakumar

For R2 : Mrs.R.Sreevidya
Vakalat not filed.

* * * * *

JUDGEMENT

The Award and decree dated 26.04.2016 made in M.C.O.P.No.38 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Chengalpattu, Kancheepuram District, is under challenge in the present Civil Miscellaneous Appeal.

2. The appellants/claimants, unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, has preferred this appeal, seeking for enhancement of compensation.

3. The details of the compensation awarded by the Tribunal under the impugned award are as follows:



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<i>Heads</i>	<i>Award Amount(Rs.)</i>
Loss of Income (Rs.2250x12x18)	4,86,000/-
Love and affection	50,000/-
Transportation charges	15,000/-
Damages	5,000/-
Funeral Expenses	20,000/-
Total	5,76,000/-

4. Learned counsel for the appellants submitted that the deceased was working as Office Assistant in a Private Office and earning a sum of Rs.6,200/- per month. The Tribunal has fixed the monthly income of the deceased only as Rs.4,500/- and awarded the compensation of Rs.4,86,000/- towards loss of income, which is very low and the same is liable to be enhanced. Further, he submitted that though the age of the deceased was 19 years at the time of accident, the Tribunal has not taken into account the future prospects and not awarded any amount towards "Loss of Estate". Also, the compensation awarded under the other heads are very meagre and hence, he prayed for enhancement of compensation.



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5. The learned counsel appearing for the second respondent/ Insurance Company has submitted that after considering the oral and documentary evidence on record, the Tribunal has awarded a just and reasonable compensation and therefore, the award passed by the Tribunal does not warrant any interference by this court.

6. This Court has considered the said submissions made by the learned counsel for the appellants and the learned counsel for the second respondent and perused the materials available on record. The first respondent has remained exparte before the Tribunal.

7. Loss of income: The appellants claimed that the deceased was earning about Rs.6,200/- per month and Ex.P6 also supported that the deceased was a earning member. However, considering the rise in cost of living and other related factors, it would be appropriate to fix a sum of Rs.6,000/- towards monthly income of the deceased.



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8. Further there was no adding of future prospects by the Tribunal. As per the Constitution Bench's judgment of the Honourable Apex Court in *National Insurance Company Limited Vs. Pranay Sethi and Others* reported in 2017 (2) TN MAC 609 (SC), 40% has to be added towards future prospects, as the claimant is aged about 19 years. If 40% is added, the monthly income would be at Rs.8,400/- (Rs.6000 + 40%)

9. As per the judgment of the Honourable Supreme Court in *Sarla Verma and Others Vs. Delhi Transport Corporation & another* reported in 2009(2) TNMAC 1 (SC), the appropriate multiplier for the age of 19 years is “18”, Therefore, the total loss of income arrived at, is as follows:

Total loss of income: Rs.9,07,200/- (Rs.8,400/- x 12 x 18 x ½)

Loss of estate: As per the Constitution Bench's judgment of the Honourable Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others* reported in 2017(2) TN MAC 609 (SC), Rs.15,000/- has to be awarded towards loss of estate. Accordingly, the same is awarded.



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Funeral expenses: A sum of Rs.20,000/- was awarded by the Tribunal towards funeral expenses. As per the Constitution Bench's judgment in Pranay Sethi's case, the same is reduced to Rs.15,000/-.

10. In so far as the amount awarded by the Tribunal towards cloth damages and transportation charges, this Court is not inclined to confirm the same, as the deceased died on spot. Accordingly, the same are set aside. The “pay and recover” order made by the Tribunal is also hereby confirmed.

11. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.5,76,000/- to Rs.10,17,200/- as detailed hereunder:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount (Rs.)</i>
Loss of income	4,86,000/-	9,07,200/-
Love and affection	50,000/-	80,000/-
Transportation charges	15,000/-	Nil
Cloth damages	5,000/-	Nil
Funeral expenses	20,000/-	15,000/-
Loss of Estate	Nil	15,000/-
Total	5,76,000/-	10,17,200/-



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12. In the Result,

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a) This Civil Miscellaneous Appeal filed by the claimants / appellants is partly allowed, by enhancing the total amount of compensation from Rs.5,76,000/- to Rs.10,17,200/- along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit and costs as awarded earlier by the Tribunal.

(b) The second respondent/Insurance Company is directed to deposit the Award amount together with interest from the date of claim petition till the date of deposit and costs as assessed by the Tribunal, to the credit of M.C.O.P.No.38 of 2013 within a period of six weeks from the date of receipt of a copy of this Judgment and less the amount if any already deposited and thereafter, recover the same from the first respondent/owner of the vehicle, in accordance with law. It is needless to state that the appellants shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment.



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(c) On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount as per the ratio apportioned by the Tribunal to the bank account of the Appellants 1 and 2 along with accrued interest through RTGS within a period of two weeks thereafter, in the light of the judgment of this Court reported in 2016 (2) Law Weekly 561 [The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and Others]

(d) There shall be no order as to costs.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To
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- 1.The Chief Judicial Magistrate Court,
Motor Accidents Claims Tribunal
Chengalpattu, Kancheepuram District.
- 2.The Section Officer
V.R.Section, High Court of Madras.



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A.A.NAKKIRAN, J.

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