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C.M.A.No.3448 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.3448 of 2021

G. Rajasekar ... Appellant/Petitioner

Vs.

1. E. Dinesh

[R1 remained ex-parte before the Tribunal.
Hence, notice to R1 dispensed with]

2. The Manager,

Third Party Claims Cells,

ICICI Lombard General Insurance Co. Ltd.,

Arihant Plaza, 1st Floor,

84/85 Walltax Road, Chennai

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 16.07.2021 made in M.C.O.P.No.613 of 2019 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellant : Mr. S. Udhayakumar

For R1 : No appearance

For R2 : Mr. Siva Kollappan



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JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimant

seeking for enhancement of compensation against the award passed in M.C.O.P.No.613 of 2019, dated 16.07.2021, on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

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

3. The case of the claimant is that on 05.12.2018 the deceased herein, namely, A.Govindan was proceeding in his bicycle on the Kilambakkam to Vandalur National Highways (NH 45) when he reached opposite to Writer Company, Kilambakkam, a Tata Ace vehicle bearing Registration No.TN 04 AQ 6998 came in the same direction with high speed in rash and negligent manner and hit against the rear side of the bicycle, which resulted in the deceased sustained grievous injury and died on the spot. In this regard, a criminal case was also registered against the driver of the Tata Ace Vehicle in Crime No.897 of 2018 under Sections 279, 304 (A) IPC on the file of the Guduvancherry Police Station. Hence the claimant has filed claim petition under Section 166 of the Motor Vehicles Act, claiming



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compensation of Rs.1,00,00,000/- for the death of his father.

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4. The first respondent is the owner of the Tata Ace Vehicle has not contested the claim and was remained ex-parte. However filed counter and denied the averments made in the claim petition. The second respondent is the insurer of the Tata Ace Vehicle has contested the claim filed counter and contended that the accident had occurred only due to the negligent act of the rider of the bicycle i.e., the deceased herein and the driver of the Tata Ace vehicle drove it with due care and caution. They have also disputed the dependency, age, avocation and income of the deceased and also the compensation claimed by the claimant is on the higher side. Hence prays to dismiss the claim.

5. Based on the evidences placed on record, in Point No.1, the Tribunal has held that the driver of the Tata Ace Vehicle is responsible for the accident. In Point Nos.2 & 3, the Tribunal has quantified the compensation and awarded a sum of Rs.18,25,150/- as compensation.



6. Aggrieved over the quantum of compensation awarded, the claimant has 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 raised by the learned counsel for the claimant is that multiplier fixed by the Tribunal for calculating loss of income is not in accordance with the norms followed by this Court and the age of the deceased is 64 years. Hence prays to enhance the award.

8. The learned counsel for the Insurance Company has vehemently contended that the Tribunal has fixed the quantum of compensation based on the evidence placed on record and the Tribunal has rightly applied multiplier and awarded compensation and there is no need for enhancing the award. Hence prays to dismiss the appeal.

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

10. The deceased herein is the owner of Ice Factory and he used



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to pay the income tax regularly and the Tribunal has rightly calculated the annual income of the deceased after deducting the income tax returns as Rs.7,02,060/- is proper and the same needs no modification. The Tribunal has applied multiplier '5' for calculating the loss of income and this Court is of the view the same needs to be revised. Since the age of the deceased is 64 years at the time of accident, as per the Judgment of the Hon'ble Apex Court in *Sarla varma and Ors v. Delhi Transport Corporation and Another* [AIR 2009 SC 3104], the applicable multiplier is '7'. The claimant is the only dependent and the Tribunal has rightly deducted 1/2 as the personal expenses of the deceased. Accordingly, the loss of income is modified to Rs.24,57,210/- [702060 x 7 x 1/2]. As far as the compensation awarded under other heads are concerned, the same are just and reasonable and the same are hereby confirmed.

11. 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/dependency	Rs.17,55,150/-	Rs.24,57,210/-	Enhanced
2.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
3	Loss of Parental Consortium	Rs.40,000/-	Rs.40,000/-	Confirmed
4	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
	Total Compensation	Rs.18,25,150/-	Rs.25,27,210/-	Enhanced by Rs.7,02,060/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.18,25,150/- is hereby enhanced to Rs.25,27,210/- [Rupees Twenty Five Lakhs Twenty Seven Thousand Two Hundred and Ten only] together with interest at the rate of 7.5% per annum from the date 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 proportionate 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.613 of 2019, on the file of the Motor Accidents Claims Tribunal, Chief Judge, Small Causes Court, Chennai. On such deposit, the appellant/claimant is permitted to withdraw the amount, now awarded by this Court, along with proportionate interest and costs, less the amount, if any, already withdrawn. The Tribunal shall disburse the amount now



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awarded by this Court by directly giving credit to the Savings Bank Account of the claimant 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.

13.12.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Chief Judge, Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K.RAJASEKAR,J.

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