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C.M.A No.2360 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A. No.2360 of 2023

1.K.Susila
2.B.Illamalli
3.A.Babu

... Appellants

Vs.

1.G.Nagarajan

2.The Manager

Reliance General Insurance Co. Ltd.
Motor Third Party Claims Office, Reliance House
4th Floor, No.6, Haddows Road, Nungambakkam
(Opp. to Sastri Bhavan, Chennai - 600 006)

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 03.06.2023 in M.C.O.P. No.941 of 2018 on the file of Motor Accident Claims Tribunal, Additional District Court (FTC), Kanchipuram.

For Appellant : Mr.K.Suryanarayanan

For Respondents : Mr.G.Vasudevan for R2



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JUDGMENT

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A 26 years old Kumaresan, a mason by avocation, died when the motorcycle which he was riding, was fatally knocked down by another motorcycle bearing Registration No.TN-73 U-5229 belonging to the first respondent and insured with the second respondent/insurance company. The accident had taken place on 04.12.2017.

2. Seeking compensation, his widow and parents approached the Tribunal with M.C.O.P. No.941/2018.

3. The Tribunal had reckoned the monthly income of the victim at Rs.8,000/- to which it added another 40% towards future prospects, applied multiplier '17' and reduced the same by 1/3rd, and arrived at the net value of the compensation payable under the head 'loss of dependency' at Rs.15,23,268/-. After adding compensation towards other conventional heads, the Tribunal has made an award for Rs.15,93,268/-. The break-up is as below:



Sl. No.	Head	Amount claimed (in Rs.)	Amount allowed (in Rs.)
1	Loss of income	20,00,000/-	15,23,268/-
2	Medical Expenses	--	--
3	Funeral Expenses	1,00,000/-	15,000/-
4	Loss of Consortium	5,00,000/-	40,000/-
5	Loss of Estate	10,00,000/-	--
6	Loss of love and affection	4,00,000/-	--
7	Transport to hospital	1,00,000/-	--
8	Damages to clothing and article	1,00,000/-	--
9	Mental Agony and shock	5,00,000/-	--
	Total	47,00,000/- (Claim restricted to 25,00,000/-)	15,93,268

4. Aggrieved by the quantum awarded by the Tribunal, the claimants are now before the court.

5. Heard both sides and perused the materials available on record.

6. The learned counsel appearing for the appellants submitted that masons are cost commodities like plumbers and electricians and the Tribunal has reckoned the daily income of this mason only around Rs.260/- per day to reckon his monthly income at Rs.8,000/-. It is both unrealistic and unreasonable and



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requires that it be interfered with. He also submitted that the parents of the victim were not awarded anything for loss of love and affection.

7. Per contra, the learned counsel appearing for the second respondent/insurance company supported the award and submitted that the claimants have not produced a shred of evidence to show that the victim was actually a mason. He also submitted that the FIR was registered only against the victim of the accident, but the Tribunal has not taken it into consideration to fix any contributory negligence on the part of the victim.

8. The rival submissions are carefully weighed.

9. So far as the allegation regarding contributory negligence is concerned, the insurance company has not preferred any appeal and hence this court does not incline to take cognizance of the same.

10. Turning to the quantum of compensation essentially for unorganised sector, in the absence of proof to contrary, one has to go by the version of the claimant. Accordingly, this court accepts the version of the claimants that the



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victim of the accident was indeed a mason. Since the accident had taken place in December, 2017, this court considers that given the cost of living, Rs.11,000/- would be a fair and reasonable income, which this court can fix notionally. Accordingly at Rs.11,000/- adding to which another 40% towards future prospects of increase in income and applying '17' as the multiplier and deducting 1/3rd towards personal expenditure of the victim, this court arrives at the net value of the compensation payable under the head 'loss of dependency' at Rs.20,94,400/-.

11. Towards loss of love and affection for parents of the victim, this court awards another 80,000/- rupees for them and so a sum of Rs.15,000/- towards loss of estate. The details of the award is as below:

Sl. No.	Head	Amount Awarded by the Tribunal (in Rs.)	Amount awarded by the High Court (in Rs.)
1	Loss of income	15,23,268/-	20,94,400/-
2	Funeral Expenses	15,000/-	15,000/-
3	Loss of Consortium	40,000/-	40,000/-
5	Loss of Estate	--	15,000/-
6	Loss of love and affection	--	80,000/-
	Total	15,93,268/-	22,44,400/-



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12. In conclusion, this court partially allows this appeal and increases the compensation payable from Rs.15,93,268/- to Rs.22,44,400/-. The second respondent/insurance company is now required to deposit the entire sum along with interest at the rate of 7.5% per annum from the date of claim petition till realisation less any amount already deposited within a period of six weeks from the date of receipt of a copy of this judgment. No costs.

20.12.2023

Asr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Motor Accident Claims Tribunal,
Additional District Court (FTC), Kanchipuram.



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N.SESHASAYEE, J.

Asr

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