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C.M.A.No.636 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.636 of 2023

1.R.Rani
2.N.K.Balaraman
3.N.K.Varadharaj
4.S.Anjalatchi @ Anjalai

... Appellants

Vs.

1.Jeppiaar Institute of Technology
Jeppiaar Nagar Kunnam Village,
Sriperumpudhur Taluk,
Kanchipuram District 602 105.

2.Bajaj Alliance General Insurance Co., Ltd.,
Old No.276/277, New No.497/498
Poonamallee High Road,
Arumbakkam,
Chennai 600 106.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 29.06.2021 made in M.C.O.P.No.6403 of 2016 on the file of the Motor Accident Claims Tribunal, (II Court of Small Causes) Chennai.

For Appellants : Mr.K.Varadhakamaraj

For R2 : Mr.J.Michael Visuvasam

for M/s.R.V.Sivaraj



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JUDGMENT

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The Civil Miscellaneous Appeal is filed by the appellants/claimants challenging the Judgment and decree dated 29.06.2021 passed in M.C.O.P.No.6403 of 2016 on the file of the Motor Accident Claims Tribunal,(II Court of Small Causes) Chennai.

2. The appeal is filed seeking enhancement of compensation.

The parties shall be referred to as per their ranking in the Tribunal.

3. According to the claimants, while the deceased Kalyani was crossing the Madras-Bangalore High Road from north to south direction opposite to Sastha Engineering College, the college bus driven by its driver in a rash and negligent manner went and hit against the deceased, causing her grievous injuries to which injuries she later succumbed to. The legal heirs of the deceased Kalyani filed the claim petition for a sum of Rs.20,00,000/- as compensation. According to the claimants, at the time of accident, the deceased Kalyani was aged about 75 years and earning a sum of Rs.600/- per day as a fish vendor.



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4. The first respondent remained *exparte* before the Tribunal.

5. The second respondent filed a detailed counter denying all the averments in the claim petition apart from disputing the negligence, liability and quantum.

6. Before the Claims Tribunal, three witnesses were examined as P.W.1 to P.W.3 and 15 documents were marked as Ex.P.1 to Ex.P.15 . The second respondent on the other hand examined R.W.1, M.Ashok Kumar, the Assistant Manager, Bajaj Alliance General Insurance Company and marked Ex.R.1.

7. The Claims Tribunal, on the basis of both oral and documentary evidence on record held that the deceased contributed to the accident and apportioned the negligence in the ratio 75% for the bus and 25% towards the deceased's negligence. The claims Tribunal awarded a sum of Rs.1,53,750/- as compensation to the claimants being the 75% share of the second respondent.



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8. The learned counsel appearing for the claimants contested the award in so far as it related to the amount awarded towards loss of love and affection. The learned counsel relying on the Judgment of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others** reported in (2017) 16 SCC 680, pleaded that the amount towards loss of love and affection be enhanced.

9. The learned counsel for the second respondent fairly conceded that in the light of the Judgment of the Hon'ble Supreme Court in **Pranay Sethi's** case referred to supra, the claimants may be awarded Rs.40,000/- each towards loss of love and affection.

10. In the light of the dictum of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others**, (2017) 16 SCC 680, I find that the claimants are entitled to enhanced compensation under the head of loss of love and affection. The claimants shall be entitled to Rs.40,000/- each towards loss of love and affection (i.e.) Rs.1,20,000/- at Rs.40,000/- each. In respect of other heads, the award of the Tribunal in my view is fair and reasonable and hence the same is confirmed.



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11. In the light of the above discussions, the compensation under the head of loss of love and affection is enhanced and modified as follows:-

Sl. No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1	Loss of dependency	*1,35,000/-	1,35,000/-	Confirmed
2	Loss of Love and affection(40,000 x4)	40,000/-	1,60,000/-	Enhanced
2	Loss of Estate	15,000/-	15,000/-	Confirmed
3	Funeral Expenses	15,000/-	15,000/-	Confirmed
Total		Rs.2,05,000/-	Rs.3,25,000/-	Enhanced by Rs.1.20,000/-

12. Since the deceased was found guilty of contributory negligence and this finding is not disturbed, there will a deduction of 25% from the enhanced amount as follows:-

Enhanced amount of compensation (3,25,000 – 2,05,000)	: Rs.1,20,000/-
Less: contributory negligence at 25% (1,20,000 x 25/100)	: Rs. 30,000/-

Total compensation payable to the claimants	: Rs. 90,000/-

13. It is submitted by the learned counsel for the claimants that



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the amount awarded by the Tribunal has already been deposited and withdrawn by the claimants.

14. In view of the same, there shall be a direction to the second respondent to pay the enhanced compensation of Rs.90,000/- along with interest at the rate of 7.5% p.a. from the date of claim petition till deposit before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw their shares with accrued interest as per apportionment fixed by the Tribunal, after filing appropriate application before the Tribunal.

15. This Civil Miscellaneous Appeal stands partly allowed. No costs.

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Index : Yes/No

Neutral Citation : Yes/No

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To:

The Motor Accidents Claims Tribunal,
(II Court of Small Causes) Chennai.



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N.MALA,J.

kkd

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