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C.M.A.No.1534 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.1534 of 2021

1. Abinaya
 2. Reshwanth (Minor)
[Minor appellant represented by his
mother, 1st appellant herein]
 3. Radhakrishnan
 4. Selvi
- .. Appellants

Versus

1. Saravanan
 2. Kandasamy
 3. United India Insurance Company Ltd.,
Office Situated at 14/1-77B, Salem Main Road,
Pudhuchampalli, Raman Nagar Post,
Mettur Taluk, Salem District.
- .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 13.03.2018 made in M.C.O.P.No.366 of 2017 on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Erode District at Bhavani.

For Appellants : Mr. Ma. Pa. Thangavel
For R1 to R3 : No appearance



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JUDGMENT

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This Civil Miscellaneous Appeal is filed by the claimants seeking enhancement of compensation awarded in the Judgment dated 13.03.2018 in made in M.C.O.P. No. 366 of 2017 on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Erode District at Bhavani.

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

3. The case of the claimants is that on 27.05.2015 at about 9.00 a.m., the deceased Gokulakrishnan was riding his two-wheeler - TVS Appachi bearing Registration No. KA 03 HK 0797 along with his friend Dharmaraj as pillion rider. When the two wheeler was driven on the Bhavani to Anthiyur Main Road, while reaching near Nellai Raj Maligai shop at Kadayampatty, a lorry bearing Registration No. TN 36 K 5163, driven by the 1st respondent, came in the opposite direction in rash and negligent manner and dashed against the two-wheeler which resulted in causing the death of the deceased on the spot. A criminal case was also registered against the driver of the lorry in Crime No.299 of 2015 under Sections 279 and 304(A) IPC. The first claimant is the wife of the deceased Gokulakrishnan and the second claimant is his



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minor son. The third and fourth claimants are the parents of the deceased Gokulakrishnan. The claimants, as dependants of the deceased, have filed the claim petition claiming compensation of Rs.40,00,000/-.

4. Based on the evidences placed on record, the Tribunal for Point No.1 has held that the accident had occurred due to the negligent driving of the driver of the lorry, the 1st respondent. In Point No.3, the Tribunal has quantified the compensation and awarded a sum of Rs.28,87,664/- as compensation to the claimants.

5. Mr. Ma. Pa. Thangavel, learned counsel for the appellants has submitted that the Tribunal has not properly awarded compensation under the head loss of income and the compensation awarded under other heads are also on the lower side, hence he prays to enhance the compensation.

6. Heard the learned counsel for the appellant. There is no representation for the respondents 1 to 3, inspite of notice issued to them.

7. It is seen from the records that the Tribunal considered Ex.X1, Fixed Term Employment Contract, which was marked through P.W.2, who is



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the HR Manager of IKYA Human Capital Solution. In Ex.X1, the monthly eligible pay of the deceased is reflected. As per Ex.X1, the gross salary of the deceased was Rs.13,787/-. That apart, bonus of Rs.282/- was also agreed to be paid. The employer has also deducted the contribution towards the Provident Fund and ESI. Based on the same, the Tribunal has rightly taken note of the contributions made towards PF and ESI which is a statutory deduction and assessed the net salary paid to the deceased. In the Month of May 2015, the number of days worked by the deceased has been taken into consideration and Pay Slip has been issued. As per pay slip, Rs.13,626/- has been paid to the deceased herein as monthly salary, however he is eligible to get Gross Salary of Rs.13787 + Bonus Rs.282/- per month. Taking note of the above, the Tribunal rightly assessed the monthly income of the deceased at Rs.13,626/- which is based on Ex.X1. The Tribunal also awarded 50% of Rs.13,626/- i.e., Rs.6813/- towards future prospects and it is reasonable and fair.

8. As far as deduction is concerned, the Tribunal has given one third of deduction towards personal expenses and deducted it while determining the compensation towards loss of income. According to the learned counsel for the claimants the Tribunal has not properly deducted the personal expenses of the deceased. Since the number of dependants of the deceased are 4 in numbers,



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appropriate deduction would be 1/4 towards personal expenses. I find force in such submission made by the counsel for the appellants. The number of dependants of the deceased was 4 i.e., wife, minor son and aged parents. The deceased was said to be the only bread winner of his family. While so, giving 1/4 deduction would be proper. Therefore, if 1/4th deduction is given, the total compensation towards loss of income payable to the deceased will be as follows:-

Monthly income	Rs. 13,626.00
Future prospects 50%	Rs. 6,813.00
Total income	Rs. 20,439.00
Annual Income	Rs.2,45,268.00
Less 1/4th deduction	Rs. 61,317.00
Total amount to be taken for compensation (Rs.2,45,268 - Rs.61,317.00)	Rs.1,83,951
Multiplier to be applied	17
Total compensation towards loss of income (Rs.1,83,951 X 17)	Rs.31,27,167.00

9. The Tribunal has awarded compensation under the head loss of consortium at Rs.40,000/- and it needs no interference by this Court. However, for loss of love and affection, as per the Judgment of the Apex Court in *National Insurance Company Ltd., vs. Pranay Sethi and others [2017 (16) SCC 680]* and *Magma General Insurance Company Ltd., vs. Babu Ram*



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[2018 (18) SCC 130] a sum of Rs.40,000/- is to be awarded for each of the claimants. In *United India Insurance Co., Limited vs. Satinder Kaur and Ors.* **[MANU/SC/0500/2020 : (2021) 11 SCC 780]**, it is clarified that Loss of Love and Affection included in the Loss of Consortium.

10. On perusal of the judgment of the Tribunal, I find that the compensation awarded under other heads such as funeral expenses, expenses towards transportation to hospital, loss of estate are fair 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	Rs.27,77,664/-	Rs.31,27,167/-	Rs.3,49,503/-
2.	Loss of Consortium	Rs.40,000/-	Rs.1,60,000/-	Enhanced
3.	Love and affection	Rs.30,000/-	---	Cancelled
4	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5	Transport to Hospital	Rs.10,000/-	Rs.10,000/-	Confirmed
6	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
	Total Compensation	Rs.28,87,664/-	Rs.33,27,167/-	Enhanced by Rs.4,39,503/-



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12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.28,87,664/- is hereby enhanced to 33,27,167/- [Rupees Thirty Three Lakhs Twenty Seven Thousand One Hundred and Sixty Seven only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The third respondent/Insurance Company 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 weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.366 of 2017, on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Erode District at Bhavani. On such deposit, the appellants/claimants are entitled to withdraw the amount, now awarded by this Court along with interest and costs, less the amount if any, already withdrawn. Out of the compensation amount of Rs.32,67,167/-, the first claimant/wife is entitled to 45% the second claimant/minor is entitled to 40% and the third and fourth claimants/parents each are entitled to 7.5%. The share of the minor claimant is directed to be deposited in any one of the Nationalized Bank, till the minor claimant attains majority. On such deposit, the 1st claimant being the mother of the minor claimant is permitted to withdraw the accrued interest once in three months for



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the welfare of the minor claimant. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants without any formal application. There shall be no order as to costs in the present appeal.

12.12.2023

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The IV Additional District Judge,
Motor Accidents Claims Tribunal,
Erode District at Bhavani.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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K.RAJASEKAR,J.

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