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C.M.A.No.849 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.849 of 2017

1. Velvizhi
2. Mam Kalagamuni
3. Mam Kala ... Appellants

Vs.

1. Vadivelu
2. The Divisional Manager,
United India Limited,
1st Floor,
Jawarhalal Nehuru Street,
Pondicherry. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under 173 of Motor Vehciles Act to set aside the decree and judgement dated 02.07.2004 made in MCOP.No.876 of 2003, on the file of the MACT, Principal District Judge at Pondicherry.

For Appellant : M/s.D.Chitra Maragatham

For respondents : R1- Ex-parte
: R2 Not Appeared



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JUDGMENT

This Civil Miscellaneous Appeal is filed seeking enhancement of compensation awarded in M.C.O.P. No.876 of 2003 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Pondicherry for the death of one Manibalan.

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

3. On 29.06.2003 at about 08.45 AM, the deceased Manibalan was travelling as pillion rider on the motor cycle bearing Reg.No.PY 01 A 1945 from North to South in 100 feet road. When the motorcycle was going near Nallam Petrol Bunk, the first respondent's bus bearing Reg.No.PY-01 T 2979 driven by the driver of the first respondent in high speed, in a rash and negligent manner, came in the same direction from behind and dashed against the motorcycle, due to which Manibalan fell on the road, the front left wheel of the bus ran over him and crushed him to death on the spot. The deceased was a Centering Contractor by profession and earning a sum of Rs.12,000/- per month. The first petitioner is the wife of the deceased and



the second petitioner is the father of the deceased and third petitioner is his mother. For the death of the deceased, the claimants has filed claim petition seeking compensation for a sum of Rs.10,00,000/- under section 166 of the Motor Vehicles Act.

4. The first respondent has not filed counter affidavit and remained exparte.

5. The second respondent has filed counter and denied the manner in which the accident is taken place and disputed the age, occupation and earnings of the deceased and prayed for the dismissal of the claim petition.

6. Before the Tribunal, on the side of claimants PW1 to PW3 were examined and Exs.A1 to A10 were marked. On the side of the respondents, neither the witness was examined nor the documents was marked.

7. Tribunal based on the evidence placed on record in point No.1 has considered the negligent act of the driver and has accepted the case of the claimant that the driver of the first respondent is responsible for the accident.



In point No.2, the Tribunal after considering the income aspect, fixed the quantum of compensation as Rs.3,36,000/-. Aggrieved over the quantum of compensation, the claimant have filed this Appeal.

8. Learned counsel for the claimant would submit that the deceased was aged about 29 years and he was Centering Contractor and his income was not properly fixed by the Tribunal and the multiplier adopted by Tribunal is also not as per the norms and the compensation awarded under other heads are also on lower side and prays to modify the same.

9. There was no representation on behalf of the respondent.

10. The claimants have examined P.W.3 who is the Trade Union Leader and also marked Ex.A10 the income certificate. Tribunal after considering his evidence has held that during cross examination there is admission of the P.W.3 that he has not directly paid salary to the deceased and he has only given a certificate on the basis of notional income earned by the Centering Contractor. This finding shows that even though claimants have examined P.W3, the Trade Union Leader, he is not the employer of the



deceased and his evidence is rightly rejected by the Tribunal. The Tribunal based on the age and income, notionally fixed the income of the deceased as Rs.2,500/- per month. The accident occurred on 29.06.2003 and the notional income fixed during the relevant period is proper and this Court does not inclined to modify the notional income. However, the proper multiplier applicable to the deceased who was aged about 29 years at the time of accident as per the judgment of the Hon'ble Apex Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]*** case is 17 and considering the number of claimants, 1/3rd of the income of the deceased is deducted towards his personal and living expenses and as per the judgment of the Hon'ble Apex Court in ***National Insurance Co. Ltd., vs. Pranay Sethi and other [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]***, the claimants are entitled for Future Prospects of 40% and accordingly, loss of income for the death of deceased is assessed as follows:

Annual income (Rs.2,500/- x 12)	= Rs.30,000/-
Future prospects @ 40%	= Rs.12,000/-
Yearly income of the deceased	= Rs.42,000/-
Yearly contribution to his family(deducting 1/3)	= Rs.28,000/-
Applicable Multiplier	= 17
Total loss of income (Rs.28,000/- x 17)	= Rs.4,76,000/-



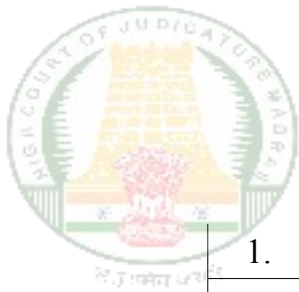
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11. On perusal of the award, it shows that the Tribunal has awarded Rs.10,000/- each under the head loss of love and affection, pain and suffering and consortium to wife. The compensation awarded under the head consortium includes loss of love and affection. Similarly, the compensation under the head pain and suffering shall not be granted in case of fatal victims. Accordingly, the compensation awarded under the head loss of love and affection and pain and suffering are hereby rejected. The claimants who are the wife and parents of the deceased are entitled to Rs.25,000/- each as compensation under the head loss of consortium. The Tribunal has awarded Rs.2,500/- towards loss of estate and Rs.3,500/- towards funeral expenses and this Court is inclined to enhance the same as Rs.10,000/- under each head.

12. In the light of the above discussion, the award of the Claims Tribunal is hereby modified as follows:

S.No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
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1.	Pain & Suffering	10,000/-	---	Rejected
2.	Loss of Income	3,00,000/-	4,76,000/-	Enhanced
3.	Loss of Love and Affection	10,000/-	---	Rejected
4.	Loss of Estate	2,500/-	10,000/-	Enhanced
5.	Funeral Expenses	3,500/-	10,000/-	Enhanced
6.	Loss of Consortium	10,000/-	75,000/-	Enhanced
	Total	3,36,000/-	5,71,000/-	Enhanced

13. In the result:

(i) This Civil Miscellaneous Appeal is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.3,36,000/- to **Rs.5,71,000/- (Rupees Five Lakhs and Seventy One Thousands only)**

(ii) The second respondent directed to deposit the above said compensation amount together with interest at the rate of 7.5% from the date of petition to the date of realization within a period of six weeks from the date of receipt of copy of this order, less the amount, if any, deposited. On such deposit, the claimants are entitled to withdraw the same by making appropriate application.

(iii) The apportionment of the Tribunal is confirmed.

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

09.08.2023



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jai/ stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Motor Accident Claims Tribunal,
Pondicherry.
2. The Section Officer,



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V.R.Section,
High Court, Chennai.



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K.RAJASEKAR, J.

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