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C.M.A.No.1022 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

C.M.A.No.1022 of 2023

1. Govindammal
2. Anandan
3. Divya (minor)

... Appellants

versus

1. Isbel Wilton
2. ICICI Lombard Gen.Ins.Co.Ltd.,
Motor III Party Claims Office,
No. 84/85, Arihant Plaza, 1st Floor,
Wall Tax Road, Chennai -1.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order dated 07.06.2022 made in M.C.O.P.No.4898 of 2016 on the file of Motor Accident Claims Tribunal, Special Sub Court-II, Court of Small Causes, Chennai and award compensation in a just and equitable manner.

For Appellants : Ms.Y.Jayanthi Bhaskar
for J. Mahalingam

For Respondents : Mr.R.V.Sivarja
for second respondent



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JUDGMENT

(made by D.KRISHNAKUMAR, J.)

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By consent of parties, the appeal is disposed of at the admission stage itself.

2. The appellants/claimants have preferred this appeal for enhancement of the compensation amount awarded by the Tribunal in M.C.O.P.No. 4898 of 2016 on the file of the Special Sub Court II, Court of Small Causes, Chennai.

3. The facts of the case are that, on 02.07.2016 by about 4:25 am while the deceased Munusamy was crossing the road at RG Salai, LB Road Junction along with another person from east to west, a car bearing Registration No.TN-01-AW-1403 was driven rashly and negligently by its driver (driver of the first respondent vehicle), in a manner endangering public safety and dashed against the deceased Munusamy and he sustained serious injuries and due to such serious injuries, he succumbed to death on the spot. Hence, the legal heirs of the deceased Munuswamy filed the aforesaid claim petition before the Motor Accident Claims Tribunal, Chennai claiming compensation amount of Rs. 55,00,000/-.



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4. Before the Tribunal, P.W.1 to P.W.4 were examined and Exhibits P1 to P10 were marked on the side of the claimants. On the side of the respondents, R.W.1 to R.W.3 were examined and Exhibits R1 to R8 were marked.

5. After analyzing both oral and documentary evidence, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the 1st respondent's vehicle and being the insurer of the said offending vehicle, directed the 2nd respondent/insurance company to pay the compensation of Rs. 11,18,000/- as total compensation along with interest at the rate of 7.5% per annum from the date of petition till realization.

6. The learned counsel appearing for the appellants submitted that the Tribunal had erred in fixing the income of the deceased as Rs.10,000/- per month inspite of documentary evidence. He further submitted that the deceased was working as a carpenter and earning a sum of Rs. 800/- per day at the time of the accident. But the Tribunal had rejected the claim of the claimants for fixing the monthly income of the deceased as Rs.20,800/- calculating 26 days as the working



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days. Therefore, the Tribunal ought to have fixed the income of the deceased at Rs.800/- per day. Hence, the compensation awarded by the Tribunal requires to be enhanced since the monthly income fixed by the Tribunal is very meager. This aspect was not considered by the Tribunal in proper prospective. Hence, the claimants have filed the present appeal before this Court. Insofar as other heads are concerned, there is no dispute in the award passed by the Tribunal.

7. On the other hand, the learned counsel appearing for the second respondent/insurance company would submit that the Court below has rightly come to the conclusion by holding the notional income of the deceased as Rs. 10,000/- per month. Hence the quantum arrived at by the Tribunal does not require any interference by this Court.

8. Heard the counsel for the parties and perused the materials available on record.

9. The only point for consideration in this appeal is with regard to the monthly income fixed by the Tribunal.



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10. Learned counsel for the appellants has relied upon the statement of P.W.2 and P.W.4 and stated that the deceased Munuswamy was working as a Carpenter and earning a sum of Rs.800/- per day. But, the Tribunal without taking into consideration the above averments, has fixed the income of the deceased only at Rs.384/- per day. He has also submitted that in the year 2016, even the minimum wage for any other labourer doing tool work, was more than Rs.400/-per day. The deceased, being a carpenter, his wages are much more higher than other labourers. Therefore, fixing the income of the deceased as Rs.385/- per day is very meager and requires enhancement. Therefore, a request is made for enhancement of the monthly income of the deceased. In view of the above, we fix the income of the deceased in a sum of Rs.500/- per day and thus the monthly income of the deceased comes to Rs.13000/- per month. Therefore, it is appropriate to fix the notional income of the deceased at Rs. 13,000/- per month. Accordingly the loss of dependency is calculated as follows:

The notional income of the deceased is fixed at Rs. 13,000/- plus 10% future prospectus would be added, as per *Pranay Sethi's* case, which comes to Rs.14,300/-. Thus, the annual income of the deceased would be 1,71,600/- (13000+10%*12). Out of the said amount, as



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per *Sarla Verma's* case, 1/3rd amount has to be deducted for personal and living expenses of the deceased, which come to Rs.1,14,400/- (Rs.1,71,600-Rs.57,200/-). As per *Sarla Verma's* case since the age of the deceased was 52 at the time of the death, multiplier 11 is adopted. Therefore, the loss of dependency comes to Rs. 12,58,400/- (Rs.1,14,400*11)

11. Insofar as other heads are concerned, there is no dispute. Thus, towards Loss of Consortium Rs.1,20,000/-, towards loss of Estate Rs.15,000/- and towards loss of Funeral expenses Rs.15,000/- are confirmed.

12. Thus, the compensation under various heads awarded by the Tribunal is modified by this Court as follows:

Sl.No	Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs
1	Loss of Dependency	9,68,000/-	12,58,400/-
2	Loss of Consortium	1,20,000/-	1,20,000/-
3	Loss of Estate	15,000/-	15,000/-
4	Funeral Expenses	15,000/-	15,000/-
	Total	11,18,000/-	14,08,400/-

13. In view of the above modification, compensation amount



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awarded by the Tribunal is enhanced from Rs. 11,18,000/- to Rs. 14,08,400/-. Thus, the appellants/claimants are entitled for a compensation of sum of Rs.14,08,000/- along with interest at the rate of 7.5% per annum.

14. The second respondent/insurance company is directed to deposit the entire compensation amount of Rs.14,08,000/- as modified by this Court at the rate of 7.5% interest per annum from the date of petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this Judgment, less if any amount already deposited. On such amount being deposited, the appellants 1 and 2 are permitted to withdraw the amount as modified by this Court as per the apportionment fixed by the tribunal along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Insofar as minor/third respondent is concerned, the said amount shall be deposited in any one of the Nationalized Banks, and the first appellant/mother of the minor, who is the natural guardian, is permitted to withdraw the interest once in every six months towards the minor's share until 3rd appellant attains majority which has been deposited in the Nationalized Bank, by filing appropriate application.



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15. With the above modification in the Award of the Tribunal, the Civil Miscellaneous Appeal is partly allowed. No costs.

(D.K.K., J.) (K.G.T., J.)
27.04.2023

Index : Yes/no
Neutral citation : Yes/no
mrn

To
Motor Accident Claims Tribunal,
Special Sub Court-II, Court of Small Causes, Chennai



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