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C.M.A.No.908 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.908 of 2017

1.Mrs.M.Saradha

2.M.N.Martin

... Appellants / Claimants

VS.

1.Mr.Balaji

2.ICICI Lombard General Insurance Co. Limited,

1st Floor, Arihant Plaza, 85/85, Waltax Road,

Chennai-600 003.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the decree and judgment dated 19.11.2012 passed in M.C.O.P.No.4525 of 2009 on the file of Motor Accident Claims Tribunal / Chief Judge, Small Causes Court, Chennai.

For Appellants : Mr.R.Ravikumar

For 2nd Respondent : Mr.R.V.Sivaraj

JUDGMENT

Being dissatisfied with the award passed in M.C.O.P.No.4525 of 2007 dated 19.11.2012 on the file of Motor Accident Claims Tribunal / Chief Judge, Court of Small Causes, Chennai, the mother and father



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of one Udhayasuriyan has preferred this Civil Miscellaneous Appeal for enhancement.

2. The claim petition was filed under Section 166 of Motor Vehicles Act, and Rule 3 of Motor Accident Claims Tribunal Rules claiming compensation of Rs.10,00,000/- for the death of claimants' son Udhayasuriyan, who died in a road motor accident that took place on 02.12.2009.

3. The Tribunal, after hearing both sides and upon consideration of oral and documentary evidence has passed an award for a sum of Rs.7,95,492/- holding the 2nd respondent liable to pay the said amount with interest at 7.5% per annum from the date of petition till the date of payment. Against which this appeal.

4. The learned counsel appearing for the appellants/claimants would strenuously argue that the deceased Udhayasuriyan was 25 years old at the relevant point of time, was working as an Associate in M/s.Lason India Pvt. Ltd., Chennai and had been earning a sum of



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Rs.10,000/- p.m. But, the Tribunal has fixed his salary at Rs.4,907/- is incorrect. The amount awarded for loss of love and affection is less and prayed for enhancement of compensation.

5. Per contra, the learned counsel appearing for the 2nd respondent / Insurance Company would vehemently contend that as per the actuals, the Tribunal had fixed the monthly salary of the deceased and future prospects was also granted while computing the income of the deceased. Hence, award passed by the Tribunal is in order, the same may not be interfered with.

6. Heard the arguments of the learned counsels for both sides and perused the materials available on record.

7. At trial, the mother of the deceased Smt.Saradha, ocular witness Mr.K.Sathish Balu and the Deputy Manager of M/s.Lason India Pvt. Ltd., Mr.Venkatesh have been examined as PW1 to PW3. Exs.P1 to P14 were marked. Payslips of the deceased are Exs.P10 and Ex.P14. Exs.P8, P12 and P13 are related to the appointment and



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confirmation letter of the deceased. On the side of the respondents,
neither any oral evidence was let in nor any document was marked.

8. It is the evidence of PW2 Mr.K.Sathish Balu that on 02.12.2009, at about 10.10 a.m., when he was waiting for his relative at Rajiv Gandhi Nagar junction, after some 15 minutes a mini lorry bearing Reg.No.TN-20-AF-0265 came in a rash and negligent manner from north to south and dashed against the two wheeler bearing Reg.No.TN-05-Q-0496 which was proceeding in front of the mini lorry. Due to the said impact, the rider of the two wheeler was thrown out and the deceased sustained head injury, is not in dispute.

9. The mother of the deceased is PW1. It is her evidence that her son Udhayasuriyan on account of the injuries due to the accident, died on the way to the hospital. The death certificate is Ex.P5. It is seen from Ex.P9 copy of the driving licence of the deceased that the date of birth of the deceased is 07.05.1984. At the relevant point of time (as on 02.12.2009) his age was 25 years. The Tribunal has taken the multiplier 13m, as per the age of the parents. The law is well



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settled that as per the age of the deceased only relevant multiplier has to be adopted in accidental injury and death cases. The Hon'ble Supreme Court has standardised the details of multiplier for different age groups. For the age group of persons between 21 to 25, the relevant multiplier is 18.

10. As regards the income of the deceased, it is the evidence of PW1 that her son was working as an Associate in M/s.Lason India Pvt. Ltd., Chennai and had been earning Rs.10,000/- p.m. Ex.P7 is the series of his Course Certificates of the deceased. Ex.P8 is the letter of appointment and confirmation. Exs.P12 and P13 are appointment and confirmation letters of the deceased. On perusal of Ex.P7 series of certificates, it is discernible that the deceased completed B.Com., Degree and he also had completed Tally Course. It is seen from Ex.P8 letter of appointment and confirmation of the deceased and similar documents Exs.P12 and P13, he was appointed by the said Company and he was made permanent with effect from 01.11.2009.

11. That apart, PW3, one Venkatesh in the capacity of Deputy Manager of the said Company had spoken elaborately about the



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employment details of the deceased. As per the salary slips Exs.P10 and P14, he was drawing a salary of Rs.6543/- per month. As per the details of salary of the deceased, as per Ex.P14, his gross-salary was Rs.6543/- per month. Out of the components shown in the salary slip, he was being paid Rs.800/- as earned conveyance amount. While calculating the income of a person, part of the income which is personally beneficial to the employee need not be added while computing the income. For example, Uniform Allowance, Conveyance Allowance they are meant for the benefit of the employee concerned. Therefore, earned conveyance amount need not be added while computing the income of the deceased. As per the payslip issued for the month of November 2009, his gross salary was Rs.6543/-. As the earned conveyance amount of Rs.800/- has to be subtracted and salary drawn has to be taken at Rs.5,743/-.

12. As per the law laid down by the Hon'ble Supreme Court in ***National Insurance Co. Ltd., v. Pranay Sethi and others*** reported in **2017 (2) TN MAC 609 (SC)**, the Honble Supreme Court has standardised the future prospects details while computing the income.



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For persons who are in permanent job, for the age group of persons below 40 years, 50% has to be added as future prospects, while computing the income.

13. As per the law laid down by the Hon'ble Supreme Court in ***Smt.Sarla Verma & Ors., v. Delhi Transport Corporation & Another*** reported in ***2009 (2) TN MAC 1 (SC)***, as the deceased was a bachelor, 50% has to be deducted for personal and living expenses and the relevant multiplier is 18. Based on the above said details, for calculating loss of dependency, the following formula emerges:

Age of the deceased : 25 years

Monthly income fixed : Rs.5,743/-

Future Prospects to be added : 50%

: Rs.5743/- + 50% = Rs.8,615/-

50% to be deducted towards

personal and living expenses : Rs.8,615/- / 2 = Rs.4,307/-

Multiplier to be adopted: 18 m

For Loss of Dependency : Rs.4,307/- X 12 X 18

: Rs.9,30,312/-



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14. As per the law laid down by the Hon'ble Supreme Court in

National Insurance Co. Ltd., v. Pranay Sethi and others reported in **2017 (2) TN MAC 609 (SC)**, the appellants/claimants are entitled for Rs.44,000/- each for loss of filial consortium. For loss of estate, an amount of Rs.16,500/- is granted. For Funeral expenses an amount of Rs.5,500/- is granted in addition to the amount already granted by the Tribunal. In all other aspects, the amount awarded by the Tribunal appears to be reasonable, therefore, needs no interference. Thus, the Compensation awarded by the Tribunal is reworked and tabulated below:

Sl. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Loss of Dependency	Rs.7,65,492/-	Rs.9,30,312/-	Enhanced
2	For Loss of Love and Affection	Rs. 20,000/-	Rs. 20,000/-	Confirmed
3	For Funeral Expenses	Rs. 10,000/-	Rs. 15,500/-	Enhanced
4	For Loss of Estate	NIL	Rs. 16,500/-	Granted
5	For Loss of Filial	NIL	Rs. 88,000/-	Granted



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Sl. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
	Consortium to the claimants 1 and 2			
	Total	Rs.7,95,492/-	Rs.10,70,312/-	
	Rounded off to		Rs.10,70,000/-	

15. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.7,95,492/-** to **Rs.10,70,000/-** which would carry interest at the rate of 7.5% per annum.

16. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.7,95,492/-** to **Rs.10,70,000/-**.

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.10,70,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit (except default period) to the credit of M.C.O.P.No.4525 of 2009 on the file of Motor Accident Claims Tribunal / Chief Judge, Small



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Causes Court, Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellants/claimants are permitted to withdraw the same along with interest and costs, less the amount if any already withdrawn, as per apportionment made by the Tribunal, by making necessary cheque application before the Tribunal. The appellants/claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

22.09.2023

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
Chief Judge,
Small Causes Court,
Chennai.
2. The Section Officer,
V.R.Section,



High Court of Madras,
Chennai.

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R.KALAIMATHI, J.,

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