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C.M.A.No. 2289 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2023

CORAM :

THE HONOURABLE Mr. JUSTICE A.A.NAKKIRAN

Civil Miscellaneous Appeal No. 2289 of 2019

1. Chinnapappa
2. Venkattan @ Venkatappan .. Appellants

Versus

1. G.Kumar
2. N.Pragasam
3. Sri Ram General Insurance Company Limited,
E8, RIICO Industrial Area,
Sitapura, Jaipur, Rajasthan – 302 022.
(R1 & R2 were exparte before Tribunal
Hence notice may be dispensed with) ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act 1988, against the judgment and decree dated 21.02.2011 made in M.C.O.P.No.1072 of 2009 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Dharmapuri.

For Appellants : Mr. R. Selvakumar
For R3 : Mr. K. Poomalai
R1 & R2 : Exparte



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JUDGEMENT

This appeal has been filed by the claimants seeking enhancement of compensation awarded under the impugned award dated 21.02.2011 passed by the Motor Accident Claims Tribunal, Principal District Judge, Dharmapuri in MCOP. No. 209 of 2015.

2. As per the claim petition, on 20.08.2009, when the deceased Hamsa was walking on the left side of Soodanur to Rayakottai road, the driver of the Mahindra Max Van bearing Registration No.TN 28 L 2433 drove it in a rash and negligent manner and dashed against the deceased. In the impact, the deceased sustained multiple injuries and she was taken to hospital where she died. The first respondent is the previous owner and the second respondent is the present owner of the Mahindra Van, while the third respondent is the insurer of the vehicle. According to the claimants, the driver of the vehicle is solely responsible for the accident and the consequential death of the deceased, hence, the appellants/claimants have filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as compensation.



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3. Before the Tribunal, the appellants/claimants have filed six documents which were marked as Ex.A1 to Ex.A6 and examined two witnesses as PW1 & PW2. On the side of the third respondent/Insurance Company, neither any document was filed, nor any witness was examined before the Tribunal. The first and second respondents were set- exparte before the Tribunal. The Tribunal, on considering the oral and documentary evidence, awarded compensation as follows:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of dependency	1,30,000/-
Love and affection	10,000/-
Transportation	5,000/-
Funeral expenses	5,000/-
Total	1,50,000/-

4. The appellants, unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, have preferred this appeal seeking enhancement.

5. The learned counsel appearing for the appellants mainly contended that the entire quantum of compensation awarded by the Tribunal is



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very low. The deceased was a school going girl aged about 13 years and she is the only daughter to the appellants. The loss that had occasioned to the appellants owing to the death of their only daughter cannot be measured in terms of money. However, the Tribunal has awarded a very meager compensation under the head of future prospectus, loss of income and loss of love, without following various judgments laid down by the Hon'ble Apex Court. Hence, he prays to enhance the award.

6. On the other hand, the learned counsel for the third respondent insurance company disputed the said contention of the appellants/claimants by stating that based on the oral and documentary evidence adduced, the Tribunal has rightly awarded a reasonable compensation and therefore, there is no need to interfere with the said finding of the Tribunal. It is also stated that the deceased was a non-earning member and was studying in school at the time of accident. Therefore also, it is contended by the counsel for the third respondent that the award passed by the Tribunal is proper and prayed for dismissal of the appeal.



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7. I have heard the learned counsel for the appellants as well as the third respondent and perused the entire materials on record.

8. The accident occurred on 20.08.2009 at Soodanur to Rayakottai road. At the time of accident, the deceased was aged 13 year old and studying in the school. The Panjapalli Police has registered a case in Crime No.83 of 2009 under Sections 279, and 304(A) IPC. Due to the accident, the deceased sustained fatal injuries all over the body and died in the hospital. Thereafter, the claim petition was filed by the father and mother of the deceased, who are the claimants/appellants herein. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the respective parties.

9. On perusal of the award passed by the Tribunal, it could be seen that the Tribunal failed to award sufficient or reasonable compensation for the death of the deceased. In other words, the compensation awarded by the Tribunal is very meager and it warrants enhancements. The compensation granted under the conventional heads are not in consonance with the principles



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laid down by the principal Apex Court of India in the case of Pranay Sethi. In view of the fact that the Tribunal has erroneously awarded the compensation under the heads of funeral expenses and love and affection, the award of compensation is to be modified.

10. Further, it is to be noted that for determining the compensation amount *inter alia* fixing the multiplier, the Tribunal has adopted the age of the Mother of the deceased. It is well settled proposition of law based on the various judgment of the Hon'ble Apex Court, the age of the deceased itself shall be taken into consideration to fix the multiplier. As per the records, the age of the deceased was 13 years at the time of the accident.

11. For the purpose of determining the loss of dependency, it is to be noted that the deceased was a school girl aged 13 years. The accident took place in the year 2009 and now we are in the year 2023. The deceased was a non-earning member and was dependent upon her parents, the appellants herein, for everything. Further, the claim petition has been filed by the appellants seeking compensation for the death of their daughter herein and



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therefore, resort to award compensation by adopting multiplier method would be proper. Accordingly, even if a sum of Rs.3,300/- is fixed as notional income of the deceased per month, a sum of Rs.40,000/- could be fixed as annual income of the deceased. By applying multiplier '13' taking note of the age of the mother of the deceased being 49 years at the time of accident, the compensation towards loss of dependency could be worked out to Rs.5,20,000/- (Rs.40,000 X 13) as against the sum of Rs.1,30,000/- fixed by the Tribunal.

12. For transportation and funeral expenses, the sum of Rs.5,000/- awarded under each head is meager and it is to be enhanced to atleast Rs.10,000/- taking note of the year of accident. Accordingly, a sum of Rs.10,000/- is awarded towards transportation and another sum of Rs.10,000/- is awarded towards funeral expenses, which would be the appropriate compensation to be awarded in this case.

13. For loss of love and affection, a sum of Rs.10,000/- was awarded by the Tribunal and it warrants enhancement. It is to be noted that the appellants



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have lost their only daughter in the accident and the mental trauma and agony confronted by them cannot be measured by any yardstick. At the same time, it was held by the Honourable Supreme Court in the oft quoted decision in **Pranay Sethi** case that a sum of Rs.40,000/- each has to be awarded to the parents towards love and affection. Applying the above principle enunciated by the Honourable Supreme Court, the compensation awarded under loss of love and affection is enhanced to Rs.80,000/- (Rs.40,000/- each).

14. Thus, this Court is inclined to modify the compensation awarded by the Tribunal as detailed hereunder:

<i>Heads</i>	<i><u>Award Amount</u></i>
Loss of dependency (Rs.40,000 X 13)	Rs . 5, 20, 000
Love and affection	Rs . 80, 000
Transport charges	Rs . 10, 000
Funeral Expenses	Rs . 10, 000
Total	Rs . 6, 20, 000



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15. In the result,

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(i) This appeal is allowed and the compensation awarded by the Tribunal is enhanced from Rs.1,50,000/- to Rs.6,20,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation.

(ii) The respondents 1 to 3 are jointly and severally directed to deposit the modified award amount i.e, Rs.6,20,000/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP. No. 1072 of 2009 within a period of six weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount as determined by this Court in this appeal to the bank accounts of the appellants /claimants along with accrued interest through RTGS within a period of two weeks thereafter. The compensation amount is directed to be apportioned equally to the claimants/ appellants, who are the parents of the deceased.



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(iv) The appellants/claimants are directed to pay the necessary court fee, if any for the enhanced compensation and the Registry is directed to draft the decree, after receipt of necessary court fee. No costs.

16. Civil Miscellaneous Appeal is allowed.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.

2. The Section Officer
V.R. Section, High Court of Madras.



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A.A.NAKKIRAN, J.

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C.M.A.No.2289 of 2019

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