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C.M.A.No.1452 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.1452 of 2020

1.Mahapurishi
2.Shanmugam
3.Rajajeswari

... Appellants

VS.

Senthil Kumar (Died)
1.The Branch Manager,
United India Insurance Co., Ltd.,
No.95, Big Street, 1st Floor,
Thiruvannamalai 606 601.

S.Krishnamoorthy (Died)

2.Banu
3.Uoormila Devi
(Respondents 2 & 3 are not necessary party.
Hence given up.)

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 31.03.2009 made in M.C.O.P.No.305 of 2005 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri.



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For Appellants : Mr.M.Selvam
For R1 : Mrs.R.Sreevidhya

JUDGMENT

The Civil Miscellaneous Appeal is filed against the Judgment and decree dated 31.02.2009 made in M.C.O.P.No.305 of 2005 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri.

2. The claimants have filed the appeal seeking enhancement of compensation. The appellants will be referred to as the claimants and the Insurance Company as the 1st respondent. All other parties will be referred to as per their rank in this appeal.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,13,000/- as compensation together with interest at 9% per annum from the date of numbering of the claim petition till the date of payment, to the appellants/claimants as against the total claim of Rs.17,50,000/-.



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4. The brief facts of the case are that the deceased Chellapandian met with an accident, on 29.12.2003, when he was travelling along with others in the Mahendra Van . It is stated that when they were proceeding from Thiruvannamalai to Tindivanam, at the time, a mini lorry bearing Registration No.TN.57.1544 insured with the 1st respondent driven by its driver in a rash and negligent came from the opposite direction and hit against the Mahindra van. As a result of the accident, the deceased Chellapandian sustained fatal injuries and died on the spot. The legal heirs of the deceased Chellapandian filed the claim petition for a sum of Rs.17,50,000/- as compensation . According to the claimants, at the time of accident, the deceased Chellapandian was aged about 25 years and carrying on business in automobile battery sales and service apart, from owning a Mini van and was earning a sum of Rs.9,000/- p.m. as income.

5. The first respondent/ Insurance Company filed a counter to the claim petition denying all the allegations and contentions raised in the claim petition apart from disputing negligence, liability and quantum.



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6. Before the Claims Tribunal, two witnesses were examined as P.W.1 , P.W.2 and five documents were marked as Ex.P.1 to Ex.P.5 by the claimants. On the side of the respondents, neither any witness was examined nor any document was marked.

7. The Claims Tribunal, on the basis of the pleadings and the oral and documentary evidence on record held that the accident occurred due to the negligence of the driver of the first respondent. The Tribunal in the absence of any documentary evidence in support of the income, assessed the income of the deceased at Rs.3,000/- p.m. The Tribunal awarded a total compensation of Rs.3,13,000/- along with interest at the rate of 7.5% p.a.

8. Not satisfied with the amount of compensation awarded by the Tribunal, the appellants have preferred the above appeal.

9. The learned counsel appearing for the appellants submitted that the income assessed by the Tribunal was on the lower side and that as the accident took place in the year 2003, considering the age and the avocation of the deceased, the monthly income ought to have been



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assessed at Rs.9,000/- per month. The learned counsel further submitted that the Tribunal erred in not adding 40% of the income towards future prospects. According to the learned counsel for the claimants, the amounts awarded by the tribunal under the other heads was very meagre and the same deserved to be interfered with.

10. The learned counsel for the first respondent/Insurance Company submitted that the award passed by the Tribunal was just, fair and reasonable and did not call for any interference in this appeal.

11. I have heard both the learned counsels and I have also perused the materials available on record .

12. It is no doubt true that no evidence was filed to prove the actual income of the deceased. At the same time, in the light of Ex.P.4 and Ex.p.5 against which no contra evidence was filed, the income of the deceased can be safely fixed at Rs.5,000/- p.m. In my view, the said amount would be reasonable considering the fact that the deceased was maintaining a family of four members and was aged 25 years at the time of the accident.



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13. It is seen from the records that the Tribunal deducted 1/3rd

of the income for the personal expenses of the deceased. The deceased Chellapandian died as a bachelor and hence 50% of the income should be deducted towards the deceased's personal expenses. The Hon'ble Supreme Court in **Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another**, (2009) 6 SCC 121, held as follows:-

“ 31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses because it is assumed that a bachelor would tend to spend more on himself.....”

14. The Tribunal has adopted the multiplier appropriate to the age of the mother of the deceased. The learned counsel for the claimant is right in contending that the multiplier appropriate to the age of the deceased should be adopted. Similarly, the contention of the claimants that they are entitled for future prospects as per the decision of the Hon'ble supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others**, (2017) 16 SCC 680, and the decision of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd.**



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Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 is also acceptable.

15. In the light of the above discussion, the compensation under the various heads is modified as follows:

Sl. No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1	Loss of dependency	*3,13,000/-	# 7,56,000/-	Enhanced
2	Funeral expenses	5,000/-	15,000/-	Enhanced
3	Filial consortium	20,000/-	# 1,60,000/-	Enhanced
Total		Rs.3,13,000/-	Rs.9,31,000/-	Enhanced by another Rs.6,18,000-

* (Rs.3000 x 12 x 1/3x12)

(Rs.5000 + 40% x 12 – 50/100 x 18)

(40,000 x 4 = 1,60,000) as per the decision of the Hon'ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanuram @ Chuhru Ram and Others**, (2018) 18 SCC 130.

16. It is submitted by the learned counsel for the claimants that the amount awarded by the Tribunal has already been deposited and withdrawn by the claimants.

17. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.



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- ii) The first respondent/Insurance Company herein is directed to deposit the enhanced compensation of Rs.6,18,000/- along with interest at the rate of 7.5% per annum from the date of numbering of appeal till the date of deposit before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order.
- (iii)The third appellant as the sister of the deceased shall be entitled to Rs.40,000/- towards loss of consortium along with accrued interest.
- (iv)On such deposit, the appellants and the third respondent are permitted to withdraw their respective shares with accrued interest as per apportionment fixed by the Tribunal, after filing appropriate application before the Tribunal.
- (iv)The first appellant is directed to pay the Court Fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee. No costs.

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Index : Yes/No
Neutral Citation : Yes/No
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N.MALA,J.

kkd

To:

The Motor Accidents Claims Tribunal,
Principal District Judge, Krishnagiri.

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