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C.M.A.No.3320 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.3320 of 2019

1.Moorthi

2.Selvarani

3.Ramya

..Appellants

Vs.

1.Rajaram

2.Selvan

3.The Divisional Manager, Divisional Office,
United India Insurance Company Limited,
Office situated at 1171, Mettur Main Road,
Erode – 638 011.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 for enhancement of compensation in the judgment and decree dated 22.01.2018 made in MCOP.No.110 of 2017 on the file of the MACT/ Special District Court (FAC) at Erode.



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For Appellants : Mr.M.Lokesh

For Respondents : Mrs.I.Malar for r3

R1 and R2 – Notice dispensed with

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN,J.)

The parents and sister of the deceased Gowtham who is a student aged about 22 years are the claimants. It is the case of the claimants that the deceased, Gowtham, who was pursuing his Post Graduation in English Literature died in a motor accident that occurred at about 11.30 a.m on 15.11.2016. Claiming that the rash and negligent driving of the driver of the lorry bearing registration No.TN-34-X-0603, belonging to the 2nd respondent and insured with the 3rd respondent was the cause for the accident, the claimants sought for a compensation of Rs.15,00,000/-.

2. The claim was resisted by the Insurance Company contending that the accident did not occur in the manner suggested and there was negligence on the part of the rider of the motorcycle in which the deceased was travelling as pillion rider. The compensation claimed



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was also termed as excessive.

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3. The Tribunal taking into account the fact that the FIR was filed against the lorry driver and the fact that there was no evidence let in on the side of the Insurance Company to demonstrate the negligence on the part of the two wheeler rider concluded that the accident occurred due to the rash and negligent driving of the lorry.

4. On the quantum, the Tribunal fixed the notional income at Rs.4,500/- per month added 40% towards future prospects deducted 50% towards personal expenses and fixed the loss of earning/ loss of dependency at Rs.6,80,400/-. The Tribunal also awarded a sum of Rs.15,000/- towards funeral expenses, Rs.25,000/- towards loss of love and affection, Rs.5,000/- towards transport to hospital, Rs.10,000/- towards damage to clothing and articles and Rs.15,000/- towards loss of estate. Thus, the total compensation awarded by the Tribunal worked out to Rs.7,50,400/-

5. The Insurance Company has not challenged the award. The



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appeal is by the claimants seeking enhancement.

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6. We have heard Mr.M.Lokesh, learned counsel appearing for the appellants/ claimants and Mrs.I.Malar, learned counsel for the 3rd respondent/ Insurance Company. Notice to the respondents 1 and 2 is dispensed with since they remained exparte before the Tribunal.

7. Mr.M.Lokesh, learned counsel appearing for the appellants would vehemently contend that the Tribunal erred in fixing the monthly notional income at Rs.4,500/- which is grossly inadequate. Pointing out to the minimum salary that is paid to the lower grade servants in the Government service, the learned counsel would submit that the Tribunal should have fixed atleast the salary of lower grade servant in the Government service as a notional income.

8. The accident had occurred in November 2016. The salary that was payable to the lower grade servants was hovering around Rs.20,000/- per month at the relevant point of time. Considering the un-



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certainty in employment we are inclined to fix the monthly notional income at Rs.15,000/-. If we add 40% towards future prospects the monthly notional income would be Rs.21,000/-, deducting 50% towards personal expenses, we fix the monthly loss of dependency at Rs.10,500/-. Adopting the multiplier '18' the total loss of dependency would be Rs.22,68,000/-.

9. The Tribunal has awarded a sum of Rs.25,000/- towards loss of love and affection. The parents would atleast get Rs.40,000/- each for loss of love and affection. Therefore, we award Rs.80,000/- for loss of love and affection to the parents. We do not grant any amount for loss of love and affection for the un-married sister, since she would get married and leave the family. We modify the award of funeral expenses and loss of estate at Rs.10,000/- each. We also award a sum of Rs.5,000/- towards transportation charges and Rs.10,000/- towards damages to clothing and articles. The appeal is partly allowed. The total compensation thus works out to Rs.23,83,000/-. Interest at 7.5% per annum would be payable on the enhanced compensation from the date of filing of the claim petition till date of payment. The enhanced compensation of Rs.16,32,600/- is apportioned as follows:-



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The sister of the deceased is awarded a sum of Rs.4,32,600/- with proportionate interest. The father of the deceased will get Rs.7,00,000/- with proportionate interest the remaining Rs.5,00,000/- will be paid over to the mother of the deceased with proportionate interest. In other aspects the order of the Tribunal do stand. No costs.

(R.S.M.,J.) (S.S.K.,J.)
20.01.2023

dsa

Index : Yes/No

Internet : Yes/No

Speaking order/ Non-speaking order

To:-

The Motor Accident Claims Tribunal,
Special District Court (FAC), Erode.



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and
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