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CMA.No.1536 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2023

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THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.1536 of 2019

1. Malliga

2.Kuppusamy

...Appellants

Vs

1.K.Kumar

2.Cholamandalam MS General Ins.Co.Ltd.,

Dare House, 2nd Floor,

NSC Bose Road, Chennai 600 001.

..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in MCOP.No.382 of 2011 dated 28.02.2014 on the file of Motor Accident Claims Tribunal (Additional District & Sessions Judge-II, Poonamallee).

For Appellants : Ms.S.Ramya

For Respondents : set Ex parte - R1

Mrs.R.Sree Vidhya for R2

J U D G M E N T

This appeal has been filed by the claimants seeking



enhancement of compensation under the impugned award dated 28.02.2014 passed by the Motor Accident Claims Tribunal (Additional District & Sessions Judge-II, Poonamallee) in MCOP.No.382 of 2011.

2. On 18.08.2010 at 7.00 a.m., while the deceased was riding a bicycle at Velachery main road, at Vijaya Nagar junction, a lorry belonging to the first respondent bearing Regn.No.TN-22-BC-7629 driven by its driver, dashed against the deceased due to which the deceased sustained fatal injuries. Claiming that the deceased was a Data Entry Operator and earning about Rs.10,000/- per month and the driver of the lorry is solely responsible for the accident, the appellants / claimants have filed a claim petition claiming a sum of Rs.15,00,000/- .

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

4. The details of the compensation awarded by the Tribunal under the impugned award are as follows:



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<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of Revenue	7,20,000/-
Loss of love and affection to petitioners	10,000/-
Funeral Expenses	5,000/-
Transport Expenses	5000/-
Total	7,40,000/-

5. Before the Tribunal, the Appellants/claimants examined three witnesses as PW1 to PW3 and filed six documents which were marked as Ex.P1 to Ex.P6. On the side of the second Respondent, neither witness was examined nor document filed.

6. Heard the learned counsel for the appellants and learned counsel for the second respondent and perused the materials available on record.

7. The learned counsel appearing for the Appellants/Claimants submitted that no contra evidence was let in by the respondents during cross examination to disprove the evidences of PW1 and PW3. However, the Tribunal has wrongly fixed the monthly income of the deceased at Rs.6000/-



Therefore, as per the Judgment cited in ***Ramachanrappa Vs. Manager,***

Royal Sundaram, rendered by the Hon'ble Apex Court dated 09.08.2011,

the monthly income of the deceased ought to be decided at Rs.6500/-. He further submitted that the Claims Tribunal failed to consider the future prospects of income of the deceased. In ***Sarla Verma and Ors. Vs. Delhi Transport Corporation and Another,*** the Apex Court considered the “ loss of future prospects of the income” of the deceased by fixing an addition of 50% of the income of the deceased where the deceased had a permanent job and was below 40 years and 30% for victims above 40 years”. Since the age of the deceased being 23 years at the time of fatal accident, an addition of 50% ought to be made towards 'loss of future prospects'. He further submitted that the Tribunal has wrongly adopted the multiplier as 15. But the multiplier 18 ought to be applied considering the age of the deceased being 23 years at the time of the accident. The Tribunal ought to award more compensation under the heads of funeral expenses, transportation and love and affection of the parents. The Tribunal failed to award any sum under the head of 'loss of estate'. The Tribunal ignored the valid evidence given by the appellants. The Tribunal, without appreciating the evidences properly, has awarded the total compensation of Rs.7,40,000/- and the said quantum is



unreasonable. It has erred in awarding Rs.10,000/- towards loss of love and affection to petitioners; Rs.5,000/- towards funeral expenses and Rs.5000/- towards Transport Expenses and the same are very meagre. Hence, he prayed to enhance the compensation.

8. Per contra, the learned counsel appearing for the second respondent submitted that the petition is devoid of merits. Moreover the compensation claimed by the appellants is highly excessive and baseless. This respondent is not liable to pay any compensation to the claimants. He further submitted that the Tribunal after analysing the evidences on record, has rightly awarded the compensation to the appellants/claimants and hence, the award passed by the Tribunal does not warrant any interference by this Court. Hence, he prays for dismissal of the appeal.

9. Taking note of the above submissions of the learned counsel for the appellants / claimants, this Court is of the considered view that Rs.6000/- fixed by the Tribunal is correct. Since the age of the deceased was 23 years at the time of accident, there is need to change the multiplier as 18. Further, the 50% towards personal expenses has to be deducted for calculating loss



of dependency. If Rs.6000/- is taken as the monthly income of the deceased, after adding 40% towards future prospectus of the deceased and 50% of the amount is deducted towards personal expenses and the multiplier of 18 is adopted, the loss of income works out to Rs.9,07,200/- , $(6000+2400=8400$, deducting 50% towards personal expenses, applying multiplier '18' = Rs.9,07,200/-.Accordingly, the amount awarded by the Tribunal towards 'loss of income' stands enhanced to Rs.9,07,200/-. Similarly, it would be appropriate to enhance the award under the head of loss of love and affection to petitioners to Rs.40,000/- each which would come to Rs.80,000/- , and also Rs.15000/- towards funeral expenses. On perusal of records, it is seen that no amount is awarded under the head of loss of estate for which they are entitled to. Hence, this court is inclined to grant a sum of Rs.15000/- towards loss of estate. The award amount of Rs.5000/- granted under the head of Transport expenses is reasonable and hence the same is confirmed.

10.The details of the enhanced compensation are as under:



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Revenue	7,20,000/-	9,07,200/-
Loss of love and affection to petitioners	10,000/-	80,000/-
Transport expenses	5000	5000
Funeral Expenses	5,000/-	15,000/-
Loss of Estate	-----	15,000/-
Total	7,40,000/-	10,22,200/-

11. Thus, the appellants / claimants are entitled to the modified compensation of Rs.10,22,200/-. It is made clear that for the enhanced amount of Rs.2,82,200/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

12.The Civil Miscellaneous Appeal is partly allowed. No costs.

13. The respondent is directed to deposit the modified compensation as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount



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along with accrued interest to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter. No costs.

14. Since the compensation amount now awarded is Rs.10,22,200/-, it is made clear that the claimants have to pay the appropriate Court fee in order to receive the awarded amount.

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To

1.The Motor Accident Claims Tribunal/
Additional District & Sessions Judge-II,
Poonamallee.

2.The Section Officer,
VR Section,
High Court, Madras.

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