



C.M.A.No.2469 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.No.2469 of 2018

1.Priya

2.Minor Saranya

3.Minor Sujatha

4.Vellaiyammal

5.Palanisamy

... Appellants

Vs.

1.P.Ramasamy

2.National Insurance Company Limited

Branch Office-1,

Mahalakshmi Nivasham

Opp to Kiruba Hospital

Rajai road, Kumarasampatty

Salem.

... Respondents



C.M.A.No.2469 of 2018

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PRAYER: Appeal filed under Sec. 173 Of Motor Vehicles Act, 1988 against the judgment and decree dated 03.07.2017 made in M.C.O.P.No.537 of 2014 on the file of MACT/Chief Judicial Magistrate Court at Namakkal.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Mr.S.Vadivel for R2

R1-Exparte

JUDGMENT

The above Civil Miscellaneous Appeal is preferred by the claimants, wife, daughters and parents of Late Sanjeevikumar who died in a road accident on 01.05.2014.

2. The case of the claimants before the Tribunal was that the deceased Sanjeevikumar was an agriculturist earning Rs.20,000/- per month and that he was aged 26 years. Stating that the claimants were all dependent on the deceased Sanjeevikumar, a total sum of Rs.35,00,000/- was claimed towards compensation.



C.M.A.No.2469 of 2018

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3. The 2nd respondent/insurance company filed a counter denying the claims made by the appellants as claimants before the Tribunal. Specifically, the insurance company took a plea that the deceased had crossed the road suddenly and therefore he had invited the accident.

4. Before the Tribunal, wife of the deceased Sanjeevikumar was examined as P.W.1 and one Rajendran was examined as P.W.2. Exs.P1 to P10 were marked on the side of the claimants. On the side of the respondents, one Susai Manickam was examined as R.W.1 and one Muruganandam was examined as R.W.2. Exs.R1 to R4 were marked as exhibits on the side of the respondents.

5. The Tribunal, in so far as negligence, found that the accident did not occur because of the negligence of the deceased Sanjeevi Kumar. However, considering the fact that the driver of the 1st respondent's vehicle did not possess a valid driving license, the Tribunal directed “pay and recover”.



C.M.A.No.2469 of 2018

WEB COPY

6. While deciding the compensation payable, the Tribunal fixed a notional income of Rs.4,500/- per month and awarded Rs.1,00,000/- towards loss of love and affection, Rs.7,000/- towards funeral expenses, Rs.5,000/- towards transport expenses and Rs.25,000/- to the first claimant, towards loss of consortium. In all, the Tribunal awarded a sum of Rs.11,09,000/-, payable together with interest at 7.5% per annum and directed the insurance company to pay and thereafter recover the same from the 1st respondent.

7. The claimants, aggrieved by the quantum of compensation awarded to them have come forward with the above Civil Miscellaneous Appeal on the grounds that the Tribunal has erroneously fixed the notional income at Rs.4,500/-; failed to consider future prospects; failed to award compensation towards love and affection to the minor children; awarded insignificant amount towards transport expenses, funeral expenses and loss of consortium.

8. Heard Mr.Ma.P.Thangavel, learned counsel for the appellants and Mr.S.Vadivel, learned counsel for the 2nd respondent/insurance company and



C.M.A.No.2469 of 2018

also perused the oral and documentary evidence adduced by the parties before the Tribunal.

9. In so far as the income of the deceased, it was the specific case of the appellants that Late Sanjeevikumar was an agricultural coolie, aged 26 years and he was earning about Rs.20,000/- per month apart from perks which are also paid to him, from time to time. The Tribunal has awarded only Rs.4,500/- per month, taking it as notional income of the deceased since there was no proof of income. It is not seriously disputed by the insurance company that the deceased was not earning at all or that he was not an agriculturist coolie. Considering the fact that the accident occurred in the year 2014s this Court is of the considered view that a sum of Rs.12,000/- can be fixed as notional income of the deceased.

10. The Tribunal, as rightly pointed out by the counsel for the appellants, has failed to take into account future prospects. Following well settled position of law, 40% is awarded towards future prospects, considering



C.M.A.No.2469 of 2018

WEB COPY

the age of the deceased. Similarly the amount of Rs.1,00,000/- towards loss of love and affection is calculated at the rate of Rs.20,000/- per claimant. In view of the recent pronouncements of the Apex Court as well as this Court each claimant is entitled to Rs.40,000/- with 10% enhancement and consequently the compensation under the head 'loss of love and affection' is modified and enhanced to Rs.44,000*4=Rs.1,76,000/-. The wife of the deceased who is the first appellant was awarded only a sum of Rs.25,000/- towards loss of consortium. A sum of Rs.44,000/- is awarded to her and the award of Rs.20,000/- by the Tribunal to the wife/first appellant under the head loss of love and affection is set aside.

11. In so far as funeral expenses, a sum of Rs.7,000/- together with 10% enhancement is awarded. In other words a sum of Rs.7,700/- is awarded towards funeral expenses. In so far as loss of income a sum of Rs.12,000/- has already been fixed as notional income. The Tribunal has also not taken into account future prospects of the deceased. Considering that he was aged 26 years only at the time of his death, 40% has to be factored towards future



C.M.A.No.2469 of 2018

prospects of the deceased, as he would have definitely earned much more in the years to come, had he been alive. Accordingly, a sum of Rs.16,800/- is fixed towards notional income and multiplier of 18 is applied. Deducting 25%, which works out to Rs.4,200/- towards personal expenses as contribution of the deceased, as a net result for the purpose of calculation of loss of income a sum of Rs.12,600/- is taken into account. Accordingly, compensation under the head loss of income is worked out in the manner following:

Loss of income	Rs.12,600*12*18=27,21,600/-
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12. The Tribunal has awarded only a sum of Rs.5,000/- towards transport expenses, which is very much on the lower side and this Court enhances the compensation to Rs.10,000/-. Accordingly, the total enhanced compensation arrived at by this Court is as follows:

Loss of Love and affection for claimants 2 to 5	: Rs.1,76,000/-
Funeral Expenses	: Rs. 7,700/-
Loss of Income	: Rs. 27,21,600/-



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C.M.A.No.2469 of 2018

Transport Expenses	: Rs. 10,000/-
Loss of Consortium	: Rs. 44,000/-

Total	: Rs. 29,59,300/-

13. The Tribunal fixing the entire liability on the 1st respondent, this Court does not find any error and the said finding does not warrant any interference. Consequently, the direction to the 2nd respondent to “pay and recover” the compensation amount, stands confirmed. In fine, Civil Miscellaneous Appeal is partly allowed, enhancing the compensation to Rs.29,59,300/- together with interest at 7.5% from the date of petition till the date of deposit. If the 2nd respondent has already deposited the award amount passed by the Tribunal, the 2nd respondent shall deposit the enhanced award amount within a period of six weeks from the date of receipt of a copy of this order. If no amount has been deposited, then the entire award amount shall be deposited. The Tribunal has given detailed directions with regard to apportionment of compensation in its concluding portions of the judgment. Considering the fact that the minor children of the deceased were also



C.M.A.No.2469 of 2018

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claimants, this Court directs the same ratio of apportionment as directed by the Tribunal to apply in so far as the enhanced compensation as well. It is seen that earlier this Court has ordered that in the event of the award amount being enhanced, additional Court fee would become payable. Now that the award amount has been enhanced by this Court, the claimants would be necessarily required to pay additional Court fees. To enable them to pay the appropriate Court fee, four weeks is granted from the date of receipt of a copy of this judgment. No costs.

20.04.2023.

Internet:Yes

Index:Yes/No

Neutral Citation:Yes/No

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To

1.The Chief Judicial Magistrate
Namakkal

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

9/12



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C.M.A.No.2469 of 2018

P.B.BALAJI, J.,
kpr

C.M.A.No.2469 of 2018

20.04.2023



C.M.A.No.2469 of 2018

C.M.A.No.2469 of 2018

WEB COPY

P.B.BALAJI, J.,

The matter is listed today (29.09.2023) under the caption 'For being mentioned' at the instance of the learned counsel for the 2nd respondent/ Insurance Company.

2. When the matter is taken up for hearing, it is brought to the notice of this Court by the learned counsel for the 2nd respondent/Insurance Company that the multiplier adopted should be 17 and not 18.

3. Both the learned counsels have fairly submitted that the correct multiplier is 17 and they have no objection for the award being modified suitably.

4. Considering the submissions made by the learned counsels, this Court directs the registry to carry out the following corrections in the judgment dated 20.04.2023:-

i) In the 9th line of 11th paragraph of the judgment, the multiplier “18” shall be replaced with “17”. In the last line of 11th paragraph, the compensation under the head loss of income “Rs.12,600*12*18=27,21,600/-” shall be replaced with “Rs.12,600*12*17= Rs.25,70,400/-”.



C.M.A.No.2469 of 2018

P.B.BALAJI, J.,

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ii) In the 12th paragraph, the compensation under the head 'loss of income' "Rs.27,21,600/- shall be replaced with "Rs.25,70,400" and the total amount "Rs.29,59,300/- shall be replaced with "Rs.28,08,100/-".

iii) In the 6th line of 13th paragraph, the amount "Rs.29,59,300/-" shall be replaced with "Rs.28,08,100/-".

5. Registry is directed to issue fresh order copy by incorporating the above said corrections.

29.09.2023

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C.M.A.No.2469 of 2018