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C.M.A.No.2412 of 2018

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 20.02.2023

CORAM:

THE HONOURABLE Mr. JUSTICE A.A.NAKKIRAN

C.M.A.No. 2412 of 2018

and

C.M.P.No. 15698 of 2018

1.Thaviramma
2.Minor Rajesh Naick
rep. by her mother/guardian
the 1st appellant)

... Appellant

Vs.

1.Ramkumar

2.The Branch Manger,
United India Insurance Company Limited,
Office at No.9, Sapthagiri Towers,
No.206-207, S.P.Road,
Hyderabad - 500 016.

... Respondents

(no relief sought against the 1st respondent, hence, notice may be dispensed with)



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Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 01.04.2016 in M.C.O.P.No.654 of 2011 on the file of the learned Principal District Judge, Motor Accidents Claims Tribunal, Krishnagiri.

For Appellant : Mr.C.Prabakaran

For Respondents : Mr.S.Arun Kumar
for R2

JUDGMENT

The appellants have filed the above appeal aggrieved by the very meagre compensation that has been granted by the learned Principal District Judge, Motor Accidents Claims Tribunal, Krishnagiri, in M.C.O.P.No.654 of 2011 dated 01.04.2016.



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2.The claimants are the wife and the minor son of the deceased Mega Naick. It is the case of the claimants that on 20.06.2010 about 08.30pm., the deceased Mega Naick proceeding to his village after finishing his personal work at Nanniyalam by walk. While so, he was nearing the Elementary School, a Tempo bearing Registration No.AP 03X 4847 belonging to the 1st respondent and insured with the 2nd respondent was coming in a rash and negligent manner, without following the traffic rules, dashed against the deceased and due to sudden impact, the deceased sustained grievous injuries and died on the spot. Hence, the accident was occurred only due to the rash and negligent driving of the 1st respondent and he is sole responsible for the same. At the time of death, the deceased was aged 42 years, doing tamarind business and earning a monthly income of Rs.12,000/-. The 1st respondent as the owner of the vehicle and



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the 2nd respondent as the insurer of the vehicle, they are liable to pay a sum of Rs.20,00,000/- as compensation for the death of the deceased Mega Naick.

3.The 1st respondent remained absent and was set *ex parte*. The 2nd respondent Insurance Company filed their counter disputing the manner of the accident. The 2nd respondent admitted that the 1st respondent is the owner of the vehicle and the offending vehicle was insured with him. The 2nd respondent disputing the accident that the driver of the offending vehicle with precautionary measures drove the vehicle, but the deceased without following the rules, suddenly crossed the road from left to right side. The compensation amount claimed under various heads is excessive. The Insurance Company denied the age, income, avocation of the deceased Mega Naick.



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4.The Tribunal after considering the evidence on record came to a conclusion that the accident was occurred due to rash and negligent driving of the driver of the 1st respondent's vehicle. Ultimately, the Tribunal has awarded a sum of Rs.6,10,000/- towards compensation with interest @8% per annum from the date of petition till the date of realisation to the claimants. Aggrieved by the very meagre compensation that has been granted by the Tribunal, the claimants are before this Court.

5.The learned counsel appearing for the appellants/claimants would submit that the Tribunal has erred in fixing the income of just Rs.4,500/- totally overlooking the fact that the deceased who was doing tamarind business and earning a sum of Rs.12,000/- per month. He would submit that the



deceased was aged 33 years at the time of accident and the future prospects of 50% has to be taken into consideration while awarding compensation towards loss of dependency. He would submit that the very low amount has been granted under various heads and therefore, the Award has to be enhanced.

6.Per contra, the learned counsel appearing for the 2nd respondent would submit that this is a very reasonable award and does not warrant a reconsideration.

7.Heard the learned counsel appearing on either side and perused the papers.

8.Admittedly, the deceased was doing tamarind business. At the time of death, the deceased was aged about 42 years. while considering the avocation, the notional income can be enhanced



to a sum of Rs.7,000/- per month to which future prospects of 25% is to be added. Therefore, the monthly income would come to Rs.8,750/-. The annual income would work out to a sum of Rs.1,05,000/- ($\text{Rs.8,750/-} \times 12 = \text{Rs.1,05,000/-}$). After deducting 1/3rd amount towards his personal expenses, the annual contribution to the family would be a sum of Rs.70,000/-. Considering his age, the appropriate multiplier to be adopted is 14. Therefore, the loss of dependency to the family would be a sum of Rs.9,80,000/- ($\text{Rs.70,000/-} \times 14 = \text{Rs.9,80,000/-}$). The minor claimant is entitled to a sum of Rs.40,000/- towards loss of love and affection. Therefore, a sum of Rs.40,000/- is granted under the head of loss of love and affection to the minor son. The Tribunal has also granted a sum of Rs.50,000/- towards loss of consortium which has to be reduced to a sum of Rs.40,000/-. Therefore, the amount under the head of loss of consortium is reduced to a sum of Rs.40,000/-. Rs.15,000/- is granted under



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the head of funeral expenses as against a sum of Rs.10,000/- already awarded. The enhanced compensation would be a sum of Rs.10,75,000/-. Therefore, taking into consideration the above aspects, the modified amount is as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	Rs.5,50,000/-	Rs.9,80,000/-	Enhanced
2.	Loss of consortium	Rs.50,000/-	Rs.40,000/-	Reduced
3.	Loss of love and affection to the minor son	-	40,000/-	Granted
4.	Funeral expenses	Rs.10,000/-	Rs.15,000/-	Enhanced
	TOTAL	Rs.5,20,760/-	Rs.10,75,000/-	

9. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The 3rd respondent/Insurance Company is directed to



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deposit the entire compensation amount of Rs.10,75,000/- with interest @7.5% per annum from 29.01.2015, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.No.654 of 2011 on the file of the learned Principal District Judge, Motor Accidents Claims Tribunal, Krishnagiri, within a period of six weeks from the date of receipt of a copy of this order, if not deposited earlier and thereafter recover the entire amount from the 1st respondent/ owner of the vehicle. On such deposit, the 1st claimants is permitted to withdraw the entire award amount with proportionate accrued interest and costs as apportioned by the Tribunal, by making necessary applications.

10.The share of the minor/2nd claimant shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The



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interest accruing on the share of the minor/2nd claimant shall be paid to the mother of the minor, once in three months, till he attains majority.

The claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimants. No costs. Consequently, connected Miscellaneous Petition is closed.

20.02.2023

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

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



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A.A.NAKKIRAN, J.

mps

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