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C.M.A.No.4436 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2023

PRONOUNCED ON : 07.03.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

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1.B.Vijayakumari

2.B.Maheswari

3.Minor B.Rajeswari

4.Minor B.Jaishankar

[Minors 3 and 4 are represented
by their natural guardian/next friend
mother 1st Appellant B.Vijayakumari]

5.V.Bakkiyam

... Appellants

vs.

1.G.Shankar

2.The Manager,
Shriram General Insurance Co., Ltd.,
Motor Third Party Claims Office,
No.66, IInd Floor, City Centre Complex,
Thirumalai Pillai Road,
T.Nagar, Chennai-17.

... 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 Decree and Judgment dated 22.01.2015 made in M.C.O.P.No.908 of 2010 on the file of the Motor Accident Claims Tribunal (District Court-II), Kanchipuram.

For Appellants : Mr.M.Sivakumar

For Respondents : Mrs.R.Sreevidhya [R2]

R1 – Served – No Appearance

JUDGMENT

This appeal is preferred by the claimants 1 to 5 who are the legal heirs of the deceased V.Balarama Naidu, against the Order dated 22.01.2015 passed in M.C.O.P.No.908 of 2010 on the file of the Motor Accident Claims Tribunal, (District Court-II), Kanchipuram.

2. Heard both sides.

3. The appellants herein had filed the claim petition before the Tribunal seeking compensation for a sum of Rs.15,00,000/- for the death of 1st petitioner's husband who died due to the injuries sustained by him in the road accident that had taken place on 03.06.2010. It is stated that as to the



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manner of accident that on 03.06.2010 at about 12 p.m., the deceased while

he was riding the motor cycle and proceeding from Walajabad to

Thavamani Rice Mill towards his native village with normal speed on the extreme left side of the mud road by following traffic rules and regulations.

When he was nearing Palar Bridge at Walajabad on the Walajabad – Avalur main Road, the 1st respondent's lorry bearing Reg.No.TN-21-K-4702 which was driven by its driver on the same direction in a rash and negligent manner and hit behind the motor cycle of the deceased and caused the accident. Due to which, the deceased was thrown away and sustained fatal injuries on the head. Immediately he was admitted to Chengalpattu Medical College Hospital and during the course of medical treatment, he succumbed to the injuries. The accident occurred only due to the rash and negligent act of the driver of the 1st respondent's lorry. The claimants are the legal heirs of the deceased Balarama Naidu. The 1st respondent is the owner of the erred vehicle and the 2nd respondent is the insurer of the said vehicle. Therefore, both the respondents are liable to pay compensation to the claimants.

4. The 1st respondent remained exparte. On behalf of the 2nd



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respondent, it is stated that the nature and manner of the accident narrated by the claimants are not true. The deceased who drove the motor cycle also contributed to the accident. The lorry was not insured with the 2nd respondent/Insurance Company and also the driver of the lorry was not holding a valid driving licence on the date of accident, besides stating that the claim is high and excessive.

5. The Tribunal having considered both oral and documentary evidence has held that the accident occurred only due to the negligence on the part of the lorry driver. Therefore, based on both oral and documentary evidences on the claimants side, as there is no oral and documentary evidence let in on the side of the 2nd respondent, the Tribunal awarded a sum of Rs.6,00,000/- as compensation.

6. On the side of the appellants/claimants, it was contended that the monthly income fixed for the deceased as on 03.06.2010 is on the lower side. Based on the judgment of the Hon'ble Supreme Court in ***Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.***, reported in ***2014 (1) TN MAC 459 (SC)***, future prospects was not added in the present case



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and the other grievances are that as there are 5 claimants, the Tribunal has deducted only one third instead of one fourth for personal expenses. The award amount granted in respect of consortium is very low and meagre and that the amount granted under the head of loss of love and affection and under the head of funeral expenses are insufficient.

7. Per contra, the learned counsel for the 2nd respondent / Insurance Company contended that the award passed comprising of various heads is found in order and it is a well considered one and based on the said award, amount has already been deposited before the Tribunal.

8. As per the law laid down in *National Insurance Co. Ltd., v. Pranay Sethi and others* reported in **2017 (2) TN MAC 609 (SC)**, while determining the quantum of compensation, in case of persons of age between 40 to 50 years, for future prospects 30 % is to be added.

9. As decided in *Smt.Sarla Verma & Ors., v. Delhi Transport Corporation & Another*, reported in **2009 (2) TN MAC 1 (SC)**, if the dependents are 4 to 6, for the personal expenses, 1/4th of the income has to



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be deducted.

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10. On perusal of the oral and documentary evidence, it appears that the age of the deceased was 47 years, was working as a driver at Thavamani Rice Mill at Walajabad and earned a sum of Rs.12,000/- p.m., as mentioned in the proof affidavit of PW1. Based on the same, the Tribunal has fixed his income as Rs.5,000/-. As the monthly income fixed by the Tribunal appears to be reasonable, and hence, the following formula emerges: Income of the deceased at the time of accident is Rs.5,000/-, by adding 30% ($\text{Rs.5,000/-} \times 30\% = \text{Rs.1,500/-}$) towards future prospects would come to Rs.6,500/-. Out of which $\frac{1}{4}^{\text{th}}$ to be deducted towards personal expenses would come to Rs.4,875/-. The compensation for the loss of dependency would come to $\text{Rs.4,875/-} \times 12 \times 13 = \text{Rs.7,60,500/-}$. In all other aspects, the award of the Tribunal appears to be reasonable and I see no reason to interfere with the same. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:



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<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed or enhanced or granted or reduced</i>
1	Loss of Dependency	Rs. 5,20,000/-	Rs. 7,60,500/-	Enhanced
2	Funeral Expenses	Rs. 5,000/-	Rs. 5,000/-	Confirmed
3	Loss of Consortium (P1)	Rs. 20,000/-	Rs. 20,000/-	Confirmed
4	Loss of Love and Affection	Rs. 55,000/-	Rs. 55,000/-	Confirmed
	TOTAL	Rs. 6,00,000/-	Rs. 8,40,500/-	
	Rounded off to		Rs.8,41,000/-	

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.6,00,000/- awarded by the Tribunal is hereby enhanced to a sum of **Rs.8,41,000/-**. Therefore, the 2nd respondent / Insurance Company is directed to deposit the enhanced amount of **Rs.8,41,000/-** to the credit of M.C.O.P.No.908 of 2010 on the file of the Motor Accident Claims Tribunal (District Court-II), Kanchipuram, together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs, less, the amount, if any already deposited, within a



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period of eight weeks from the date of receipt of a copy of this Judgement.

On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, as apportioned by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. The share of the minors shall be deposited in any one of the nationalized bank till they attain majority and the 1st appellant, mother of the minors B.Vijayakumari shall be permitted to withdraw quarterly interest from the said amount. The claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants. No costs.

07.03.2023

Index : Yes/No

Speaking / Non-speaking order

ssn

To:

1. The Motor Accident Claims Tribunal,
(District Court-II),



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Kanchipuram.

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

R.KALAIMATHI, J.,

ssn

Pre-delivery Judgment in
C.M.A.No.4436 of 2019



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