BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.694 of 2023

C.Mary Vijaya ... Appellant

.vs.

1.C.Devaraja

2.Reliance General Insurance Company Limited,
Through its Branch Manager,
D.No.10/4/4, II Floor,
Thaha Plaza,
South Byepass Road,
Vannarapettai,
Tirunelveli 627 003.

3.A.Francis

4.Bajaj Allianz General Insurance Company Ltd.,
through its Branch Manager,
North Bye Pass Road,
Vannarapettai,
Tirunelveli 627 003. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, to enhance the award amount in MCOP.No.1015 of 2017 on the file of the Motor Accident Claims Tribunal (I Additional District Judge, Tirunelveli, dated 11.04.2022.

For Appellant	:Mr.T.Selvakumaran
For R1	:No appearance
For R2	:Mr.J.S.Murali
For R3	:Given up
For R4	:Mr.N.Shyllappa Kalyan

JUDGMENT

This appeal is filed for enhancing the award passed in MCOP.No. 1015 of 2017 on the file of the Motor Accident Claims Tribunal/I Additional District Court, Tirunelveli.

2.The appellant filed MCOP.No.1015 of 2017 seeking compensation of Rs.20,00,000/- for the death of her son. It is the case of the appellant that on 18.03.2016 at about 03.30 pm., her son, the deceased, F.Franklin Vijay, was travelling in a motor cycle bearing Reg.No.TN 75 W 2733 as a pillion rider with one F.Pradhap, who was the rider. When they were travelling on the left side of Eravi Pudurkadai to Swamiyar Madam National Highways Road, an Auto Rickshaw bearing Reg.No.TN 75 V 3702 came from the opposite direction in breakneck speed and dashed against the motor cycle. As a result, the deceased suffered head injury, other injuries and died on the spot. The deceased was 18 years old at the time of the accident and he was working as Fisherman. He was earning Rs.20,000/- per month. He has contributed to the income of the family. After his death, that income was lost and therefore, the claim petition was filed.

3.The second respondent/Insurance Company filed a counter affidavit questioning the claim of the appellant. It was contended that the accident had happened because of the rash and negligent riding of the two wheeler rider. The two wheeler rider had no driving license. The occupation and monthly income of the deceased were also challenged.

4.During enquiry, P.W1 and P.W2 were examined and Ex.P1 to Ex.P8 were marked. R.W1 was examined and Ex.R1 was marked. On considering the oral and documentary evidence, the learned Tribunal found that the accident had happened because of the rash and negligent driving of the driver of the Auto Rickshaw bearing Reg.No.TN 75 V 3702 and fixed the liability on the second respondent/Insurance Company for paying compensation. The Tribunal fixed the notional income of the deceased at Rs.6,000/- and calculated the loss of dependency at Rs.9,07,200/-. That apart, Rs.50,000/- was awarded towards loss of filial consortium, Rs.15,000/- was awarded towards loss of estate and Rs.15,000/- was awarded towards funeral expenses. Thus, total compensation of Rs.9,87,200/- was awarded.

5.It is the submission of the learned counsel appearing for the appellant that the deceased was a Fisherman and was 18 years. Even by doing some manual work, he would have earned not less than Rs.5oo/- per day and in total, not less than Rs.15,000/- per month. Therefore, fixing the monthly income of Rs.6,000/- is too low. In support of his submission, he pressed into service the judgment of this Court in ***Andal and another Vs. Avinav Kannan and others*** reported in ***2019 (1) TN MAC 54(DB)***.

6.In reply, the learned counsel appearing for the second respondent submitted that the deceased was only 18 years at the time of accident and there is no proof to show his avocation and income. The Tribunal had rightly taken Rs.6,000/- per month as his monthly notional income and calculated the compensation. That cannot be faulted.

7.Considered the rival submissions and perused the records.

8.It is true that in the judgment reported in ***2019 (1) TN MAC 54(DB)***, this Court on the basis of the judgment of the Hon'ble Apex Court in ***Syed Sadiq Vs. United India Insurance Co. Ltd.,*** reported in ***2014 (1) TN MAC 459***, fixed the notional income of the deceased at Rs. 6,500/- and using cost of inflation index, devised a formula and arrived at the notional income of the deceased. However, this Court finds that the deceased in that case was 48 years and was working as a Meat Chopper. There was no dispute with regard to his age, occupation and earning. Here in this case, the deceased was only aged 18 years. Though it is claimed that he was a Fisherman, there is no documentary evidence filed in support of the claim. In the said circumstances, this Court is of the view that the judgment reported in ***2019 (1) TN MAC 54(DB)*** cannot be made applicable to this case. However, going by the age of the deceased that he was only 18 years and he had long years of existence, had the accident not happened and that he is the son of the claimant, who is a widow and that she is the dependant of his income, this Court is of the view that the deceased would have earned not less than Rs.10,000/- per month even by doing some manual work, like coolie work. Therefore, fixing the notional income at Rs.10,000/-, in the considered view of this Court, is just and appropriate.

9.As per the dictum laid down in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC) : 2009 ACJ 1298 (SC), 40% of this amount should be added towards future prospectus of the deceased and thus, the monthly notional income of the deceased comes to Rs.14,000/- (Rs.10,000/- + Rs.4,000/-). Since the deceased was a bachelor, 50% of this amount has to be deducted towards his personal expenses and thus, the monthly loss of income comes to Rs.7,000/-. Proper multiplier for computing the loss of dependency is 18 and calculated 7,000 x 12 x 18 comes to Rs. 15,12,000/-.

10.This Court finds that a sum of Rs.50,000/- is awarded towards loss of filial consortium. As per the judgment of ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017(2) TN MAC 609 (SC),*** maximum of Rs.40,000/- can be given for loss of filial consortium for a person. Thus, Rs.50,000/- awarded is reduced to Rs. 40,000/-. The compensation of Rs.15,000/- towards loss of estate and Rs.

15,000/- towards funeral expenses are confirmed by this Court. Apart from this, Rs.10,000/- is awarded towards transport expenses.

11.In the result, the compensation awarded by the Tribunal is modified as under:-

S.No.	Head	Awarded by the Tribunal	Awarded by this Court	Difference
1	Loss of Dependency	Rs.9,07,200/-	Rs.15,12,000/-	Rs.6,04,800/- (Enhanced)
2	Loss of Filial Consortium	Rs.50,000/-	Rs.40,000/-	Rs.10,000/- (Reduced)
3	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Nil
4	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Nil
5	Transport Expenses	Nil	Rs.10,000/-	Rs.10,000/- (Enhanced)
Total		**Rs.9,87,200/-**	**Rs.15,92,000/-**	**Rs.6,04,800/- (Enhanced)**

12.In fine, this Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.9,87,200/- to Rs.15,92,000/- with interest at the rate of 7.5% p.a.from the date of claim petition till the date of realization. The 2nd respondent/Insurance Company is directed to deposit the modified enhanced award amount with accrued interest and costs, less the award amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the amount along with interest and cost, less the amount already withdrawn, if any, by filing proper petition before the Tribunal. No costs.

Index :Yes/No
Internet :Yes/No
NCC :Yes/No

06.11.2023

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To

The I Additional District Judge,
Tirunelveli.

G.CHANDRASEKHARAN,J.

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C.M.A(MD)No.694 of 2023

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