**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 14.06.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

C.M.A(MD)No.142 of 2017

1. Minor Rakesh Sivasundaram
   (Minor Represented by his father, friend
   and natural guardian)
2. P.Selvakumar ... Appellants/ Petitioners

-vs-

1. Abdul Wahab

2. Shri Ram General Insurance Company Ltd.,
   E-8, EPIP, RIICO Industrial Area,
   Seethapura,
   Jaipur – 302 022 ... Respondents/Respondents
   (1st Respondent set ex-parte before Tribunal.
   Hence, the 1st Respondent may be dispensed with)

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 22.06.2015 in .M.C.O.P No.1636 of 2013, on the file of the Motor Accidents Claims Tribunal/Special District Judge, Trichirappalli and seeking enhancement of compensation for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only).

For Appellants : Mr.N.Sudhagar Nagaraj

For Respondent : Mr.D.Sivaraman – for R2
for dismissed – R1

# JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of the award passed by the Motor Accidents Claims Tribunal/Special District Judge, Trichirappalli, made in  in .M.C.O.P No.1636 of 2013.

2. The deceased was a Secondary Grade Teacher in a Government School, drawing a salary of Rs.30,000/- (Rupees Thirty Thousand only). She met with an accident on 25.02.2012 and she passed away on 17.03.2012. The husband and minor son of the deceased have filed M.C.O.P.No.1636 of 2013 claiming compensation of a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only).

3. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the monthly income of the deceased was Rs.26,103/- (Rupees Twenty Six Thousand One hundred and Three only) and applying the multiplier of "14", arrived at a total loss of dependency at Rs.43,85,304/- (Rupees Forty Three Lakhs Eighty Five Thousand Three Hundred and Four only). A sum of Rs.1,00,000/- (Rupees One Lakh only) was awarded towards loss of love and affection and another sum of Rs.20,000/- (Rupees Twenty

Thousand only) was awarded towards funeral expenses and transport expenses. A sum of Rs.1,26,531/- (Rupees One Lakh Twenty Six Thousand Five Hundred and Thirty One only) was awarded towards Medical Expenses. The total sum of Rs.46,31,835/- (Rupees Forty Six Lakhs Thirty One Thousand Eight Hundred and Thirty Five only) was arrived at and thereafter, the Tribunal has deducted 20% towards income tax and professional tax and arrived at the compensation of Rs.37,05,468/- (Rupees Thirty Seven Thousand Five Thousand Four Hundred and Sixty Eight only). This award is under challenge in the present appeal.

4. According to the learned counsel appearing for the appellants, the income tax would be deducted only at the rate of 10% and that too, only for the amount awarded under the head of loss of dependency. The Tribunal had erred in deducting 20% on the aggregate of the award amount. He further contended that the Tribunal has not awarded just compensation towards love and affection, funeral expenses and transport charges. Hence, he prayed for enhancement of the award amount under these heads.

5. Per contra, the learned counsel appearing for the second respondent had contended that the Tribunal has properly appreciated the documents filed on the side of the claimants and arrived at the compensation which is already on the higher side and it does not require any interference for enhancement.

6. I have carefully considered the submissions made by the learned counsel on either side.

7. A perusal of the award of the Tribunal indicates that the Tribunal has deducted 20% towards Income tax and professional tax out of from the total award amount, instead of deducting income tax from the head of loss of dependency. Therefore, as rightly contended by the learned counsel appearing for the claimants, only 10% income tax could be deducted and that too, for the amount that is awarded under the head of loss of dependency.

8. In view of the above said facts, if 10% of income tax is deducted from Rs.43,85,304/-, the lump sum award under the head of loss of income is Rs.39,46,774/- (Rupees Thirty Nine Lakhs Forty Six Thousand Seven Hundred and Seventy Four only).

9. Both the claimants are entitled to Rs.40,000/- (Rupees Forty Thousand only) each towards loss of love and affection. Apart from that, Rs.15,000/- (Rupees Fifteen Thousand only) would be awarded towards funeral expenses and another sum of Rs.15,000/- towards loss of estate. Therefore, a sum of Rs.1,10,000/- would be awarded under the head of loss of love and affection, funeral expenses and loss of estate. The another sum of Rs.10,000/- (Rupees Ten Thousand only) would be awarded towards transport expenses. A sum of Rs.1,26,531/- (Rupees One Lakh Twenty Six Thousand Five Hundred and Thirty One only) awarded towards medical expenses, is confirmed.

10. In view of the above said deliberations, the award of the Tribunal is hereby modified as follows:

| | |
|---|---|
| Loss of dependency | : Rs.39,46,774/- |
| Loss of love and affection, Funeral expenses and loss of estate | : Rs. 1,10,000/- |
| Transport expenses | : Rs. 10,000/- |
| Medical Expenses | : Rs. 1,26,531/- |
| Total | : **Rs.41,93,305/-** |

11. Therefore, the award of the Tribunal is enhanced from 37,05,468/- to Rs.41,93,305/- (Rupees Forty One Lakhs Ninety Three Thousand Three Hundred and Five only) and the said enhanced amount will carry interest at the rate of 7.5% per annum from the date of the claim petition till the date of realisation. The Insurance Company is directed to deposit the enhanced amount within a period of eight weeks from the date of receipt of a copy of this order.

12. Accordingly, this Civil Miscellaneous Appeal is allowed to the extent as sated above. There shall be no order as to costs.

**14.06.2023**

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

1. The Motor Accidents Claims Tribunal/
   Special District Judge, Trichirappalli

2. The Section Officer,
   Vernacular Records,
   Madurai Bench of Madras High Court,
   Madurai.

**R.VIJAYAKUMAR,J.**

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