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CMA.No.54 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.08.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J. NISHA BANU
&
THE HONOURABLE MRS. JUSTICE R. KALAIMATHI**

**C.M.A.NO.54 OF 2023 &
CMP.NO.14692 OF 2024**

- 1.A. Ammu
2. A. Ajith
3. A. Sarathkumar
4. A. Pazhaniyammal

.. Appellants

Vs

1. M/s.SRM Transports India Pvt. Ltd.,
SRM Nagar, Kattangulathur,
Kancheepuram District,
Pincode 602 203.
2. United India Insurance Company Limited,
Silingi Building,
No.134, Greams Road,
Chennai 600 006.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 30.09.2022 made in MCOP.No.6186 of 2019 on the file of Motor Accident Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai

For Appellants : Mr. Varadha Kamaraj
For Respondents : R1- No appearance
R2- Mr.P.Sankaranarayanan



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JUDGMENT

[Order of the Court was made by J.Nisha Banu, J.]

This Civil Miscellaneous Appeal has been filed by the appellants/claimants, challenging the quantum of compensation awarded by the tribunal.

2. The facts leading to filing of this appeal is as follows;

(i) On 14.11.2019, at about 23.30 hrs, when the deceased Alex Pandian was sleeping on the side of the platform opposite to CMWSSB Board and Kaliyamman Koil Street, Koyambedu, Chennai, a private bus bearing Regn.No.TN 19 AD 4305 proceeding from south to north direction, driven by its driver in a rash and negligent manner, ran over the platform and dashed against the deceased, due to which, the deceased sustained head injuries and multiple fatal injuries all over the body and died on the spot.

(ii) Respondents 1 and 2 are the owner and insurer of the offending vehicle.

(iii) The legal heirs of the deceased Alex Pandian made a claim petition before the Motor Accidents Claims Tribunal, Chennai in M.C.O.P.No.6186 of 2019 claiming compensation of Rs.30,00,000/- against



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the respondents. The 1st claimant is the wife of the deceased and 2nd and 3rd claimants are the children of the deceased. The 4th claimant is the mother of the deceased.

(iv) According to the claimants, at the time of death, the deceased was 33 years and was employed as a load man at Flower Market, Koyambedu and was earning Rs.750/- per day. Since the death of the deceased occurred due to the rash and negligent driving of the driver of the offending vehicle, the owner and insurer of the vehicle are liable to pay the compensation.

(v) Before the Tribunal, on the side of the claimants PW1 and PW2 were examined and exhibits Ex.P.1 to Ex.P.13 were marked. On behalf of the Insurance Company, no witness was examined and no documents were marked. Owner of the offending vehicle remained exparte.

(vi) The tribunal, on an appreciation of evidence of witnesses and documents marked as exhibits, awarded a compensation of Rs.22,06,000/-. The tribunal directed the owner and insurer of the offending vehicle to pay the abovesaid compensation amount jointly and severally to the claimants, along with 7.5% interest from the date of petition till the date of realisation.

(vii) The compensation apportioned by the tribunal to the claimants is as follows;



1st petitioner /wife - Rs.8,00,000/-
2nd and 3rd petitioner/Children – Rs.5,50,000/- (each)
4th petitioner/mother - Rs.3,06,000/-

3. Aggrieved against the compensation awarded by the tribunal, the claimants, as appellants, have preferred the present Civil Miscellaneous Appeal challenging the quantum of compensation awarded by the tribunal.

4. The learned counsel appearing for the appellants would submit that the deceased was employed as a load man and was earning Rs.750/- per day. However, the tribunal, without considering the oral evidence of PW1, year of the accident and age of the deceased, fixed the monthly income of the deceased only at Rs.10,000/- per month and has awarded meager amount of Rs.20,16,000/- towards loss of income. Therefore, he prayed for enhancement of the compensation awarded to the claimants.

5. The learned counsel for the appellant further submitted that the children of the deceased were aged about 9 years and 4 years respectively at the time of accident namely in 2019. Now, the children are aged around 14 and 9 years respectively. They are school going children and 1st appellant/mother of the minors intends to give them quality education.



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Considering the present rate of inflation and cost of living in over all commodities, the compensation awarded by the tribunal is on a much lower side. Therefore, the learned counsel submits that considering the present rate of inflation, the compensation awarded by the tribunal needs a re-look and it should be refixed on a higher side.

6. Learned counsel appearing for the 2nd respondent/Insurance Company would state that the amount awarded by the Tribunal under various heads is just and reasonable and hence, the same does not warrant any interference. Therefore, he prayed for dismissal of the appeal.

7. Heard both sides and perused the materials available on record.

8. Perusal of the award would go to show that the tribunal has fixed the notional income of the deceased at Rs.10,000/- per month . Considering the age of the deceased and year of the accident and taking into consideration the fact that the deceased was employed as loadman in the flower market, this Court fixes the notional income of the deceased at Rs.15,000/- instead of Rs.10,000/-. Adding 40% future prospects as per the decision of the Hon'ble Apex Court in *National Insurance Company Limited Vs. Pranay Sethi*,



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[2017(2) TNMAC 609 (SC)], the monthly income of the deceased would be calculated as follows:

$$\text{Rs.15,000/-} + \text{Rs 6000/-} = \text{Rs.21,000/-}$$

Thus, the monthly income of the deceased is fixed at Rs.21,000/-. After deducting one fourth of the income of the deceased towards his personal expenses and applying appropriate multiplier of 16, the amount under the head Loss of Income shall be computed as follows:

$$\text{Rs.21,000/-} \times 12 \times 16 \times \frac{3}{4} = \text{Rs.30,24,000/-}.$$

9. Apart from that, the tribunal has awarded Rs.15,000/- towards loss of estate and Rs.40,000/- towards loss of consortium to each of the four dependants being mother, wife and two children. It has also awarded Rs.15,000/- towards funeral expenses. The compensation amounts awarded under the above heads by the tribunal are borne out by records. Hence, the same are hereby confirmed.

10.The compensation awarded by the tribunal and the enhanced compensation awarded by this court under conventional heads are tabulated



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<i>Heads</i>	<i>Tribunal</i>	<i>High Court</i>
Loss of Income/ Dependancy	Rs. 20,16,000/-	Rs.30,24,000/-
Loss of Estate	Rs. 15,000/-	Rs. 15,000/-
Loss of Consortium (Rs.40,000/- each)	Rs. 1,60,000/-	Rs. 1,60,000/-
Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
Total	Rs.22,06,000/-	Rs. 32,14,000/-

The claimants/appellants are entitled to receive the enhanced compensation as per the apportionment made by this Court as tabulated hereunder:

<i>Appellants/Claimants</i>	<i>Apportionment made by Tribunal</i>	<i>Apportionment made by High Court</i>
1 st appellant/wife of deceased	Rs. 8,00,000/-	Rs.10,00,000/-
4 th appellant / mother of deceased	Rs.3,06,000/-	Rs.3,06,000/-
2 nd & 3 rd appellants / children of deceased	Rs.5,50,000/- (each)	Rs.9,54,000/- (each)
Total	Rs.22,06,000/-	Rs. 32,14,000/-

11. In all, the appellants/claimants are entitled to the enhanced compensation of Rs.32,14,000/-, (Rupees thirty two lakhs and fourteen



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thousand only) with interest at the rate of 7.5% p.a. from the date of the claim petition till the date of realisation.

12. In the result,

- The Civil Miscellaneous Appeal is allowed.
- The appellants/claimants are entitled to the enhanced compensation amount of Rs.32,14,000/- (Rupees thirty two lakhs and fourteen thousand only) along with interest @ 7.5% p.a. from the date of the claim petition till the date of realisation, as per the apportionment made by this Court.
- The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.32,14,000/- with interest at the rate of 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.
- On such deposit, the appellants/claimants are permitted to withdraw their respective shares as per the apportionment made by this court, along with proportionate interest and costs.
- The share amount of the minor claimants /2nd and 3rd



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appellants are directed to be deposited in any one of the Nationalised Banks till they attain majority. The mother of the minors - the 1st appellant, is permitted to withdraw the accrued interest once in three months for the welfare of the minors.

- The appellants are directed to pay the necessary Court fee on the enhanced award amount, if any.

No costs. Consequently, the connected miscellaneous petition is closed.

[J.N.B.,J.] [R.K.M.,J.]
21.08.2024

msr

Index:yes/No

Internet:yes/no

To

The Motor Accident Claims Tribunal,
(Chief Judge, Court of Small Causes),
Chennai.



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