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CMA.No.2058 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.2058 of 2021

1. Mallika
2. S.Ilangovan
3. Jayanthi
4. S.Senthil Nambu ...Appellants

Vs.

1. N.S.V.Engineering Works,
No.15/151, Trichy Road,
(Opp. Sarguna Mills), Selvarajapruam,
Chindamanipudur,
(Since R1 remained exparte before the Tribunal his presence may be
dispensed with)
2. National Insurance Company Limited,
(Motor Third Party Cell),
No.751, Anna Salai,
3rd Floor,
Chennai – 600 002. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award against the judgment and decree dated 03.11.2018 and made in M.A.C.T.O.P.No.6797 of 2015 on the file of the Motor Accident Claims Tribunal, The (Special Sub Court No.2, Motor Accidents Claims Petitions) Small Causes Court, Chennai.



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For Appellants : M/s.A.Subadra

For Respondents : Notice dispensed with vide V.P.Sr.2716
dated 06.01.2020

Mrs.P.Sreevidhya for R2

JUDGMENT

Challenging the judgment and decree dated 03.11.2018 passed in M.A.C.T.O.P.No.6797 of 2015 on the file of the Motor Accident Claims Tribunal, The (Special Sub Court No.2, Motor Accidents Claims Petitions) Small Causes Court, Chennai, the claimants have filed the above appeal seeking enhancement of compensation.

2. It is the case of the claimants that, on 20.06.2015 at about 15:00 hours, when the deceased was attempting to cross the pedestrian crossing at G.S.T.Road, near Singaperumal Koil Bus Stop, Kanchipuram District, at that time the Eicher Van bearing Regn.No.TN-37-CB-6018 belonging to the first respondent insured with the second respondent, driven by its driver in a rash and negligent manner dashed the deceased, due to which sustained grievous injuries and died on the spot. Thereby, the appellants, who are the dependents of the deceased filed a claim petition in



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MCOP.No.6797 of 2015 claiming a compensation of Rs.15,00,000/-.

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3. Before the Tribunal, the claimants examined two witnesses viz. P.W.1 and P.W.2 and marked Exhibits P.1 to P.8 and the respondents have neither marked any exhibits nor examined any witnesses. After trial, the Tribunal, on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the driver of the 1st respondent van and awarded Rs.3,50,000/- towards compensation for the death of the deceased. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have come up with this appeal seeking enhancement of compensation.

4. Learned counsel for the appellants submitted that the above said accident happened solely due to the rash and negligent driving on the part of the driver of the 1st respondent van and the accident is of the year 2015 and at the time of accident, the deceased was only aged about 68 years and was running a Tiffin Stall and was earning not less than a sum of Rs.15,000/- per month, however, the tribunal had taken the notional



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income of the deceased as Rs.8,000/-, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions and thereby, the same has to be interfered with. Further, the compensation awarded under other heads are also on the lower side and the same needs to be enhanced. Accordingly, he prayed for appropriate orders.

5. Per contra, the learned counsel appearing on behalf of the 2nd respondent-Insurance Company contended that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, she prays for dismissal of the appeal.

6. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. The factum and manner of the accident is not disputed by the parties and the parties have not raised any issue on the aspect of



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negligence and therefore, this Court is not venturing into the same.

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8. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2015 and at the time of accident, the deceased was aged about 68 years and she was running a Tiffin Stall, however, the Tribunal had fixed the notional monthly income at Rs.8,000/-, which is on the lower side. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1) TANMAC 459**, and also considering the age of the deceased as also the claimants, fixing a notional income of Rs.10,000/- and since the deceased was aged about 68 years, she is not entitled for future prospects. As has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in **2017 (16) Supreme Court Cases 680**, the income per month is quantified at Rs.10,000/-. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.6,667/- per month (Rs.10,000/- - Rs.3333/-) and the deceased being aged about 68 years, as evidenced from the records, adopting the multiplier of 5 as fixed by the Apex Court in the case of



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Sarla Verma and Ors. v. DTC & Ors. reported in (2009) 6 SCC 121, the loss of income to the family is arrived at Rs.6,667/- * 12 * 5 = Rs.4,00,020/-.

9. No amount has been awarded by the Tribunal under the head loss of love and affection, hence this Court grants a sum of Rs.30,000/- to each dependents in total a sum of Rs.1,20,000/- (4 * Rs.30,000/-) is granted to all the appellants. Insofar as the compensation awarded under the other heads are concerned, this Court is of the view that the compensation awarded under other heads are just and reasonable and the same does not requires interference of this Court.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of dependency	3,20,000/-	4,00,020/- (enhanced)
Loss of love and affection	-	1,20,000/- (awarded)
Loss of estate	15,000/-	15,000/-



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of funeral expenses	15,000/-	15,000/-
Total	3,50,000/-	5,50,020/-

11. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.6797 of 2015 is modified by enhancing the compensation amount from Rs.3,50,000/- to **Rs.5,50,020/-**. The 2nd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No.6797 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. It is underscored that the appellants are not entitled to any interest for the default period, if any. The compensation awarded by this Court shall be apportioned among the



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appellants equally, with proportionate interest and costs. No costs.

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rap
NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

To:

1. Motor Accident Claims Tribunal, The (Special Sub Court No.2, Motor Accidents Claims Petitions) Small Causes Court, Chennai.



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

M.DHANDAPANI, J.

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