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C.M.A.No.2829 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2829 of 2022

1. N.Mookkayee
W/o.Nattan

2. N.Dharmaraj
S/o.Nattan

3. N.Kaniyamuthu
D/o.Nattan

4. N.Mullainathan
S/o.Nattan

... Appellants / Petitioners

Vs.

1. M.Ravinchandran

2. Reliance General Insurance Co. Ltd.,
No.6, Reliance House, VI Floor,
Haddows Road,
Nungambakkam,
Chennai - 600 006.

... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.2637 of 2015, dated 11.09.2018, on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.1, Motor Accidents Claims Petitions) Small Causes Court, Chennai.



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For Appellants : Mr.R.Ramesh
for Amar Dineshbhai Pandiya

For Respondents : No appearance for R1
Ms.C.Bhuvanasundari for R2

J U D G M E N T

This civil miscellaneous appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P.No.2637 of 2015 by the Motor Accidents Claims Tribunal (Special Sub Court No.1, Motor Accidents Claims Petitions) Small Causes Court, Chennai on 11.09.2018 for the death of one Nattan S/o. Palanimuthu, who died in the road accident taken place on 08.12.2014.

2. The brief facts leading to filing of this appeal is that on 08.12.2014, at about 10.00 pm, when the deceased was walking on the side of the road from West to East direction near Sri Kumaran Hotel at 200 ft road, Senthil Nagar, Korattur, a car, bearing Registration No.TN-18-L-3033, driven by its driver came from South to North direction in a rash and negligent manner and hit the deceased, due to which he sustained grievous injuries and subsequently, he died in the hospital. The first respondent is the



owner of the car and the second respondent is the insurer of the car. The claimants, who are the dependants of the deceased, filed claim petition claiming compensation of Rs.30,00,000/- for the death of the deceased.

3. The first respondent is the owner of the vehicle bearing Registration No.TN-18-L-3033 and has not contested the claim and remained exparte before the Tribunal. The second respondent - insurer of the car contested the claim and disputed the manner in which the accident had taken place and also disputed the age and income of the deceased. Hence, he prays to dismiss the claim petition.

4. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P1 to P18 were marked. On the side of the second respondent, no witnesses were examined and no exhibits were marked. The Tribunal after considering the evidence placed on record, has held that the rash and negligent driving of the driver of the car bearing Registration No.TN-18-L-3033 was the reason for the accident and the second respondent / Insurance Company is liable to pay the compensation. Further, the Tribunal has quantified and granted a compensation for a sum of



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Rs.12,39,000/- along with interest @ 7.5 per annum from the date of filing of claim petition till the date of realization.

5. Not satisfied with the quantum of compensation awarded, the claimants have come forward with this appeal seeking enhancement of compensation on the ground that the Tribunal has not properly appreciated the evidence placed on record for fixing the income of the deceased.

6. The learned counsel appearing for the claimants submitted that the age of the deceased has not been properly fixed by the Tribunal and the notional income of the deceased has been fixed after rejecting the evidence of P.W.3, who was the employer of the hotel, in which the deceased was working as Supervisor/Manager. He further submitted that the compensation awarded under other heads are also on the lower side and hence, the learned counsel prays for enhancement of compensation.

7. The learned counsel appearing for the second respondent / Insurance Company submitted that the age of the deceased was fixed based



on Ex.P4-death certificate. Since the evidence of P.W.3 is not sufficient to prove the income of the deceased, the Tribunal has fixed the notional income at Rs.10,000/-. Even though it is on the higher side, the Insurance Company has not questioned the same by filing an appeal challenging the notional income. She further submitted that the compensation awarded under other heads need not be disturbed since the same is reasonable.

8. I have considered the submissions made on both sides and perused the materials available on record.

9. With regard to the age of the deceased, the claimants have relied upon Ex.P5-postmortem certificate, wherein, it has been recorded that, the age of the deceased is 50 years. The claimants also marked Ex.P4-death certificate, but they have not produced any other documents to prove the age of the deceased. It is the claimants' case that the deceased was working as Supervisor/Manager and was earning more than Rs.25,000/- as monthly income. Ex.P4-death certificate was issued by the Corporation after conducting enquiry, whereas the age mentioned in the postmortem certificate is based on the complaint given by the de-facto complainant. In



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the First Information Report, the age of the deceased was mentioned as 50 years, whereas Ex.P4-death certificate which has been issued by the statutory authority shows the age of the deceased as 55 years and it is admitted by the claimants that they were not able to produce any documents except this document. In these circumstances, the age mentioned in Ex.P4-death certificate, which has been issued by the Corporation of Chennai, is having more evidenciary value than the postmortem certificate which is based on the complaint. Therefore, the age fixed by the Tribunal is accepted and the same is proper.

10. Further, this Court also noted that the claimants were able to produce Aadhar Cards of the claimants, whereas they come forward with the case that they were not having any other documents to prove the age of the deceased, which is sufficient to raise presumption that the claimants had tried to take advantage of the age mentioned in the postmortem certificate and this Court is not inclined to accept the stand taken by the claimants.

11. With regard to the notional income fixed by the Tribunal, the



evidence of P.W.3 is to the effect that the deceased was working as Supervisor/Manager in the hotel. P.W.3 was not able to produce any document to show the proof of salary or the pay slip. Only the certificate issued in the letter pad of the hotel stated that the deceased was paid Rs.25,000/- p.m. In the cross-examination, totally he has given up his evidence recorded in the chief examination and stated that he never seen the deceased working in the hotel and also not aware of the deceased, thereby the evidence of P.W.3 need not be considered as evidence to prove the income of the deceased. In such a backdrop, considering the fact that the accident had happened in the year 2014, this Court is inclined to fix the notional income of the deceased at Rs.12,000/- by applying the ratio laid down by the Apex Court in *Syed Sadiq & Ors. Vs. The Divisional Manager, United India Insurance Co. Ltd (2014 (2) SCC 735)*. Therefore, the loss of income would be $\text{Rs.12,000} \times 10\% = \text{at Rs.13,200/-}$ [$\text{Rs.12,000/-} + \text{Rs.1200}$]. Therefore, the loss of dependency would be $\text{Rs.13,200/-} \times 12 \times 11 \times \frac{3}{4}$ (1/4 deducted towards personal expenses) = **Rs.13,06,800/-**.

12. The Tribunal has awarded Rs.40,000/- under the head loss of



consortium and the same is hereby confirmed. The Tribunal has awarded

Rs.75,000/- to the claimants 2 to 4 under the head loss of love and affection.

As per the Hon'ble Apex Court judgment in the case of *United India Insurance Co. Limited v. Satinder Kaur and Ors.* reported in (2021) 11 SCC 780, the compensation awarded under loss of love and affection is comprehended in loss of consortium and it also laid a dictum that all the claimants are entitled to consortium of Rs.40,000/- each. Therefore, the claimants 2 to 4 are entitled to Rs.40,000/- each. The Tribunal has also awarded Rs.15,000/- towards loss of estate and the same is confirmed. The Tribunal has also awarded Rs.5,000/- under the head transportation and Rs.15,000/- under the head funeral expenses. Since the funeral expenses includes transportation charges, the transportation charges awarded is hereby cancelled.

13. Accordingly, the award passed by the Tribunal under various heads is hereby modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of Dependency	10,89,000/-	13,06,800/-	Enhanced



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
2.	Loss of Consortium	40,000/-	1,60,000/-	Confirmed
3.	Loss of Love and Affection	75,000/-	-	Cancelled
4.	Loss of Estate	15,000/-	15,000/-	Confirmed
5.	Transport Charges	5,000/-	-	Cancelled
6.	Funeral Expenses	15,000/-	Rs.15,000/-	Confirmed
	Total Compensation	12,39,000/-	14,96,800/-	Enhanced

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,39,000/- is hereby enhanced to **Rs.14,96,800/-** together along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2637 of 2015 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.1, Motor Accidents Claims Petitions) Small Causes Court, Chennai. On such deposit, the appellants are permitted to



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withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Accounts of the claimants. Since this Court has enhanced the compensation, the appellants / claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

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Index :Yes / No

Speaking Order :Yes / No

Neutral Citation Case: Yes / No

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1. The Motor Accidents Claims Tribunal
(Special Sub Court No.1, Motor Accidents
Claims Petitions) Small Causes Court,
Chennai.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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K.RAJASEKAR, J.

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