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Cma.No.2746 -J- ----

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2746 of 2021

1. V. Sujatha
2. V. Janani
3. V. Jaswanth
4. R. Sakunthala

.. Appellants

[Appellants 2 & 3 are *Suo motu* declared as major and their mother/Sujatha is discharged from guardianship of the appellants 2 & 3, vide order of this Court dated 09.12.2024 made in CMA.No.2746 of 2021]

Versus

1. N. Prakash
2. The National Insurance Co. Ltd.,
Now the 2nd respondent having Office at
No.66, Greams Road, Murugesu Naicker Complex,
I - Floor, Chennai - 6.

.. Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 15.03.2019 made in M.C.O.P. No.2769 of 2014 on the file of the Special Sub-Court No.2, Small Causes Court, Chennai/Motor Accident Claims Tribunal, Chennai.

For Appellants : Mr. K. P. Ponnuswamy,
for M/s. Anand and Suryas

For Respondents : Mrs. R. Sreevidhya (for R2)
: No Appearance (for R1)



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JUDGMENT

The appellants, who were the claimants before the Special Sub-Court No.2, Small Causes Court, Chennai/Motor Accident Claims Tribunal, Chennai, have filed the present appeal seeking enhancement of compensation against the Award dated 15.03.2019 made in M.C.O.P. No.2769 of 2014.

2. For the sake of convenience, the parties are referred to as per their ranks mentioned in the claim petition.

3. It is the case of the claimants that, on 20.08.2013 at about 11.00 A.M, when the deceased was riding his two-wheeler bearing Registration No.TN-20-CX-5002 from Thiruthani to Thiruvallur Highway Road, nearing to Mahendra Petrol Bunk. At that time, the respondent's vehicle, a TATA Ace mini van bearing Registration No.TN-73-9684 which was driven by its driver in a rash and negligent manner and dashed against the two-wheeler driven by the deceased. In the impact, the deceased thrown away from the two-wheeler and hit by a Transport Corporation Bus, bearing Registration No.TN-21-N-1405 which was coming from behind. Due to the injuries suffered, the deceased died on the spot. The claimants, being dependants of the deceased, have filed a claim petition in M.C.O.P. No.2769 of 2014, before the



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Special Sub-Court No.2, Small Causes Court, Chennai/Motor Accident Claims Tribunal, Chennai, claiming a compensation of Rs.50 Lakhs.

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4. The claim petition was resisted by the second respondent/Insurance Company by filing a counter statement contending *inter alia* that the deceased was responsible for the accident and he had wholly contributed for the accident. The respondents also denied the age, monthly income and other particulars furnished by the claimants. It was also stated that the claimants are not entitled for any compensation payable by the respondents. Furthermore, it was submitted that the insurer of the two wheeler has not been arrayed as a party to the claim petition and therefore, the claim petition has to be dismissed on the ground of non-joinder of necessary party.

5. Before the Tribunal, in order to prove the quantum of compensation, the first appellant was examined as P.W.1 and besides one eye-witness was examined as P.W.2. The claimants have also marked as many as 21 documents were marked as Exs.P1 to P21. On behalf of the respondents, no witnesses or documents was marked.

6. On appreciation of oral and documentary evidence adduced in M.C.O.P.No.2769 of 2014, the Tribunal, fixed the liability on the part of the driver,



who drove the TATA ACE mini van and directed the insurer of the van, the second respondent, to pay the award amount of Rs.22,63,800/- as compensation to the appellants/claimants towards the death of the deceased/R.Venkatesan. Not being satisfied with the compensation awarded by the Tribunal, the appellants/claimants have come up with the present appeal, seeking enhancement of compensation.

7. Learned counsel for the appellants submits that at the time of accident the deceased was aged about 46 years. He was an agriculturalist and also a building contractor. He earned a sum of Rs.6 Lakhs per annum and he was the only male member of the family and earning person. The deceased was maintaining the family consist of the appellants by contributing atleast a sum of Rs.30,000/- per month. However, the Tribunal had taken the notional income of the deceased as R.15,000/-, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex Court in catena of decisions. Even assuming that the deceased was a coolie, he can earn a sum of Rs.1,000/- per day. Further, he submits that the Tribunal has failed to award any compensation in respect of love and affection especially when the deceased had left four dependants. Further, the Tribunal awarded only a sum of Rs.40,000/- to the first appellant towards consortium and the remaining appellants were not awarded any amount towards loss of love and affection. Accordingly, he prayed for appropriate orders.



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8. Per contra, learned counsel appearing for the respondents submits that though the first appellant claimed that the deceased earned a sum of Rs.3 Lakhs per annum from the agricultural activities and Rs.3 Lakhs per annum from the Civil Contract work, no documentary evidence were produced before the Tribunal to substantiate the same. Further, he submits that by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

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

10. It is well settled law that if the earning of the deceased is more than Rs.5 Lakhs, it is mandatory the deceased has to submit income returns every year before the income tax department, but on the side of the appellants/claimants no document was marked except the PAN card.

11. Insofar as the quantum of compensation fixed by the Tribunal is concerned, the accident is of the year 2013 and at the time of accident, the deceased was aged about 46 years. It is claimed that the deceased was an agriculturist and a



civil contractor by profession. In the absence of any documentary evidence produced to show the actual income of the deceased, the Tribunal fixed the notional monthly income at Rs.15,000/-, which cannot be said to be on the lower side. Taking note of the age of the deceased at the time of accident, it is proper to award compensation towards loss of future prospects. As per the decision of the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company reported in 2014 (1) TANMAC 459*, and considering the age of the deceased as also the claimants, adding future prospects at 40%, will be proper. This was also the law laid down 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*. Accordingly, 40% of the notional income fixed by the Tribunal is to be fixed towards future prospects, which will be fair and reasonable.

12. In respect of deducting 1/4th towards the personal expenses of the deceased, and adopting the multiplier of '14' for determination of the compensation by the Tribunal, it is in accordance with the ratio laid down by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors. reported in (2009) 6 SCC 121*, and therefore, it is not required to be interfered with by this Court.

13. As far as loss of consortium awarded by the Tribunal at Rs.40,000/- to the



first claimant, it is proper. At the same time, no amount was awarded by the Tribunal towards loss of love and affection in favour of other claimants, which they are entitled to. Accordingly, a sum of Rs.40,000/- each is fixed for the claimants 2 to 4 towards loss of love and affection.

14. Accordingly, this Court modified the award passed by the Tribunal as follows:

S.No	Description	Amount awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted
1.	Loss of dependency	Rs.21,93,750/-	Rs.21,93,750/-	Confirmed
2.	Loss of estate	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Loss of consortium	Rs.40,000/-	Rs.40,000/-	Confirmed
4.	Loss of love & affection	----	Rs.1,20,000/-	Granted
4.	Loss of Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
	Total	Rs.22,63,750/-	Rs.23,83,750/-	Rs.1,20,000/-

15. When the claim petition was filed in the year 2014, the 2nd appellant was aged about 12 years and the 3rd appellant was aged about 11 years. Now, the 2nd appellant should be aged about 22 years and the 3rd appellant should be aged about 21 years and are therefore, major. Though no application has been taken out to declare them as major, this Court *suo motu* takes into account the age given in the



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claim petition and also taking into account the efflux of time, declares the 2nd and 3rd appellants as major and discharges their guardian Mrs. V. Sujatha from the guardianship. The Registry shall carry out the necessary amendments.

16. In the result, this Civil Miscellaneous Appeal is partly allowed on the following terms:

(i) The award passed by the Tribunal in M.C.O.P.No.2769 of 2014 is modified by enhancing from **Rs.22,63,750/-** to **Rs.23,83,750/-** along with interest at the rate of 7.5% per annum from the date of petition till the date of realization.

(ii) The second respondent is directed to deposit the enhanced award amount now determined by this Court, to the credit of M.C.O.P.No.2769 of 2014, along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit, the Tribunal is directed to transfer the compensation amount directly to the bank account of the appellants through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants.



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(iv) The apportionment of the compensation will be as ordered by the Tribunal, however, the claimants 2 to 4 are entitled to a sum of Rs.40,000/- each over and above the apportion of compensation made in their favour.

(v) There shall be no order as to costs in the present civil miscellaneous appeal.

09.12.2024

Index : Yes/No

Speaking Order : Yes/No

Neutral Case Citation : Yes/No

To

1.The Special Sub-Court No.2, Small Causes Court,
Chennai/Motor Accident Claims Tribunal, Chennai.

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

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M.DHANDAPANI, J.

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