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C.M.A.No.650 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.650 of 2024

1.Thelaka

2.Chandrabose

3.Vaishnavi

.. Appellants

Vs.

1.M/s.Choudhary Transport Company,
No.2, Royal lifes, Jaysingapura TA Waghodia,
Vadodara, Gujarat.

2.M/s. Go Digit General Insurance Company Ltd.,
Ground Bharathi Vilas,
26-B, Jawaharlal Nehru Salai,
Ekkanduthangal, Guindy Industrial Estate,
Chennai.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the award dated 01.09.2023 made in M.C.O.P.No.1146 of 2021 on the file of the Special District Judge, MCOP Tribunal, Salem and enhance the compensation.

For Appellants : Mr.L.Ramanathan

For R2 : Mr.B.Siva Kollappan



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JUDGMENT

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The claimants being the Mother, Father and Sister of the deceased Gopalakrishnan have filed this appeal against the award passed in M.C.O.P.No.1146 of 2021 on the file of the Special District Judge, MCOP Tribunal, Salem, dated 01.09.2023, seeking for enhancement of compensation.

2.The case of the claimants is that the deceased Gopalakrishnan on 25.07.2021 had gone to a temple with his friend in his two wheeler and on his way back at about 06.00 PM, when the bike was crossing the Kandhanpatty Petrol Bunk at Thiruvagoundanur to Kondalampatty Bypass road, the offending vehicle belonging to the 1st respondent was driven in a rash and negligent manner and as a result, it hit the rear side of the two wheeler and as a result, the deceased was thrown away from the two wheeler and he sustained grievous injuries resulting on his death on the spot. An FIR came to be registered in Crime No.362 of 2021 by the Sooramangalam Police Station, Salem District. It is under these circumstances, the claimants have filed the claim petition seeking for payment of compensation.



3.The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a categoric conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle belonging to the 1st respondent. Having rendered such a finding, the Tribunal fixed the total compensation at Rs.11,65,000/- in the following manner:

Loss of income [(10,000 X 12 X 18=) 21,60,000 – 1/2 (10,80,000) =	-	Rs.	10,80,000-00
Loss of love and affection (20,000 X 3)	-	Rs.	60,000-00
Funeral expenses	-	Rs.	25,000-00
Total	-	Rs.	11,65,000-00

4.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

5.The claimants not being satisfied with the quantum of compensation granted, have filed this appeal seeking for enhancement of compensation.



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6.Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.This Court has also carefully gone through the award passed by the Tribunal.

9.In the instant case, it is quite evident from the evidence of P.W.2 and also Exs.P10 & P11 that the deceased was receiving regular amounts from the Mahaveer Industries. Even if it is held that the deceased is not the employee under Mahaveer Industries, the Court cannot disregard the amounts that has been received by the deceased on a regular basis from Mahaveer Industries. The deceased was undertaking the avocation of Building Demolisher for contract at Salem. These amounts are borne out by the Bank statement. The Tribunal has held that there is no proof of income of the deceased and therefore proceeded to notionally fix the income at Rs.10,000/- per month including future prospects of 40%. This income fixed by the Tribunal is on the lower side and it requires



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enhancement.

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10.Considering the materials placed before this Court, this Court holds that the monthly income of the deceased can be fixed at Rs.20,000/-. The deceased was aged about 24 years at the time of accident and hence, 40% can be added towards future prospects. Thus, the total monthly income can be fixed at Rs.28,000/- (Rs.20,000/- + Rs.8,000/-). Thus, the compensation under the head of loss of income will work out to a sum of Rs.30,24,000/- (Rs.28,000/- X 12 X 18 X 1/2).

11.The Tribunal has awarded compensation under the head of loss of love and affection at Rs.60,000/-. The same can be enhanced to Rs.1,20,000/- by awarding Rs.40,000/- for each of the claimants.

12.The Tribunal has fixed the compensation under the head of funeral expenses as Rs.25,000/- and this is on the higher side and the same is hereby reduced to Rs.15,000/-.

13.No compensation has been granted under the head of loss of



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estate and hence, a sum of Rs.15,000/- can be fixed under the head of loss of estate.

14.In view of the above discussion, the award passed by the Tribunal is modified as follows:

1.Loss of Income	-	Rs.30,24,000.00
2.Loss of love and affection	-	Rs.1,20,000.00
3.Funeral expenses	-	Rs.15,000.00
4.Loss of estate	-	Rs.15,000.00

		Rs.31,74,000.00

15.The compensation awarded by the Tribunal at Rs.11,65,000.00 is hereby enhanced to Rs.31,74,000/-. The respondents are jointly and severally directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.



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16.In the result, the Civil Miscellaneous Appeal is allowed in the

above terms. No costs.

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

To

1.The Special District Judge,
MCOP Tribunal,
Salem.

2.The Section Officer,
VR Section,
Madras High Court, Chennai.

N.ANAND VENKATESH, J.



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