IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.807 of 2024

1.R.Iswaraya
W/o.Dinesh

2.D.Hardik (minor)
S/o.Dinesh ... Appellants

Vs.

1.G.S.Baskaran
S/o.Sampathan

2.The Manager,
Shriram General Insurance Company Limited,
No.2-A, Mookambika Complex, 2nd Floor,
Lady Desika Road, Mylapore,
Chennai - 600 004.

3.R.Dhanasekaran
S/o.A.P.Raman

4.D.Uma Maheswari ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.06.2023 passed in M.C.O.P.No.7456 of 2018 by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellants : Mr.K.Balaji

For Respondents : Ms.C.Bhuvanasundari [R2]

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JUDGMENT

The appellants, who are the wife and minor son of the deceased, not being satisfied with the quantum of compensation awarded by the Tribunal, have filed this appeal seeking for enhancement of compensation against the award passed by Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, in M.C.O.P.No.7456 of 2018, dated 16.06.2023.

2. The case of the claimants is that the deceased Dinesh was riding a two-wheeler on 07.01.2018 at Mudhukarai to Cuddalore road and at about 21.30 hours, when the vehicle was approaching Pavanjur Suryankaddu, the offending vehicle, *viz.*, lorry which was driven in a rash and negligent manner, hit the two-wheeler and as a result of which, the deceased was thrown out of the vehicle and he sustained severe head injuries. Unfortunately, the next day, he succumbed to the injuries. A First Information Report came to be registered in Crime No.4 of 2018 against the driver of the offending vehicle. It is under these circumstances, the

claimants approached the Tribunal and filed the claim petition seeking for compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the accident had taken place due to the rash and negligent driving of the lorry and the negligence was completely attributed as against the driver of the lorry belonging to the first respondent. Having rendered such a finding, the Tribunal proceeded to determine the compensation and awarded total compensation of Rs.28,01,000/- in the following manner:

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Loss of dependency	25,92,000/-
2.	Loss of consortium	1,76,000/-
3.	Loss of estate	16,500/-
4.	Funeral expenses	16.500/-
	Total	**28,01,000/-**

The above compensation was directed to be paid with interest at 7.5% p.a.

4. The claimants, not being satisfied with the quantum of compensation awarded by the Tribunal, have approached this Court

seeking for enhancement of compensation.

5. Heard learned counsel for appellants/claimants and learned counsel for second respondent insurance company.

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

7. This Court also carefully went through the award passed by the Tribunal.

8. The main ground that was urged by learned counsel for appellants is that the Tribunal did not properly appreciate Ex.P14 - salary slip and also Ex.P15 - bank passbook. It was contended that the Tribunal had fixed the monthly income at Rs.12,000/- which is on the lower side.

9. *Per contra*, learned counsel for the second respondent insurance company submitted that the compensation awarded by the Tribunal is

reasonable and it was based on proper appreciation of the documents relied upon by the claimants and also the evidence of PW-1 and that the same does not require the interference if this Court. Learned counsel, therefore, contended that there are no merits in this appeal and the same is liable to be dismissed.

10. The deceased in this case was a driver, who was working in a private company named M/s.Layam Flexi Solutions Private Limited. Ex.P14 - Salary slip of the deceased shows that the gross monthly salary was Rs.12,364/-. However, on carefully going through Ex.P15 - bank passbook of the deceased, it is seen that apart from the monthly salary, the deceased was also regularly paid batta by the Private Limited Company, considering the fact that he was a driver. In fact, during the month of June 2017, he was paid a sum of Rs.20,000/-. Hence, on an average, the deceased must have earned at least Rs.15,000/- p.m. as salary. In view of the same, the monthly salary fixed by the Tribunal to the tune of Rs.12,000/- is on the lower side and it has to be enhanced to Rs.15,000/-.

11. Learned counsel for second respondent insurance company

submitted that the Tribunal went wrong in fixing 50% towards future prospects. It was contended that the deceased was only working as a driver in a private company and the same cannot be considered to be a permanent job and it can only be construed as an unorganized sector. Therefore, it was contended that the same has to be reduced to 40% in the line with the judgments of the Apex Court in ***Sarla Verma and others v. Delhi Transport Corporation and another*** [***2009 (2) TN MAC 1 (SC)***] and ***Pranay Sethi and others vs. National Insurance Company Limited [(2017) 2 TNMAC 609 (SC)].***

12. On carefully going through the materials placed, this Court finds that the deceased was getting guaranteed/definite income every month and therefore, it cannot be said that the deceased was self-employed or he was engaged in an unorganised sector. The Apex Court in the above judgments never said that except persons working in the Government service, every other person should be treated as working in unorganized sectors since they are working in private companies. The test is to see as to whether the deceased was getting a guaranteed/definite income every month and if that is so, then the above judgments are very

clear that future prospects must be fixed at 50%. The Tribunal has properly considered this aspect and rightly fixed the future prospects at 50% and the same does not require the interference of this Court. Accordingly, the compensation payable under the head 'loss of dependency' works out to Rs.32,40,000/- [(15000+7500)*12 - 1/4*16]

13. In the light of the above discussion, this Court modifies the compensation in the following manner:

Sl. No.	***Compensation awarded under the head***	***Amount awarded by the Tribunal (in Rs.)***	***Amount awarded by this Court (in Rs.)***
1.	Loss of dependency	25,92,000/-	32,40,000/-
2.	Loss of consortium	1,76,000/-	1,76,000/-
3.	Loss of estate	16,500/-	16,500/-
4.	Funeral expenses	16.500/-	16.500/-
	Total	**28,01,000/-**	**34,49,000/-**

14. The compensation awarded by the Tribunal at Rs.28,01,000/- is enhanced to Rs.34,49,000/-. The second respondent insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of

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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 appellants/claimants. The enhanced compensation of Rs.6,48,000/- shall entirely go in favour of the appellants 1 and 2 herein equally. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

18.04.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
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To
The Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.

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