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C.M.A.No.2232 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

C.M.A.No.2232 of 2024

1.Uma

2.Minor.Sanjana

represented by her next friend guardian mother Uma ..Appellant

Vs.

1.Saikat Kumar Ghosh

2.M/s.National Insurance Company Limited,
2nd Floor, LRN Building, Saradha College Road,
LRN Colony, Hasthampatty, Salem District. ..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act, 1988
to modify the award dated 01.12.2023 made in M.C.O.P.No.1118/2022 on the
file of the Special District Judge, MCOP Tribunal at Salem.

For Appellant : Mr.T.L.Thirumalaisamy

For 1st respondent : Mrs.N.B.Sureka



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J U D G M E N T

(The order of the Court was made by J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been preferred by the appellants/claimants, praying for enhancement of the compensation awarded by the tribunal in the judgment and decree dated 01.12.2023 passed in M.C.O.P.No.1118/2022, on the file of Special District Judge, MCOP Tribunal at Salem.

2. The appellants are the claimants; 1st respondent is the owner of the vehicle; 2nd respondent is the Insurance Company.

3. On 14.05.2022 at about 5.10 p.m., when the deceased Santhoshkumar @ Mariya Santhosh was riding his two-wheeler bearing registration No.TN.30-AQ-6514, on the left side of the Steelplant road towards Kavadi Palaniyandavar Temple Cross Road, a car bearing registration No.TN.38-CS-3094 was parked without any signal on the left side of the road and when the said Santhoshkumar @ Mariya Santhosh was passing, the driver of the car opened the door in a rash and negligent manner, due to which the said Santhoshkumar @ Mariya Santhosh was hit by the car door and was thrown



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out and he sustained grievous injuries all over the body and he was admitted in Gokulam Hospital, Salem and shifted to G.H., Salem, wherein he died on 15.05.2022.

4. The appellants/claimants have filed M.C.O.P.No.1118 of 2022 claiming a sum of Rs.2 Crore as compensation. The learned Judge, Tribunal, after analysis of entire pleadings, counter, evidence both oral and documentary, held that the 1st respondent was rash and negligent and caused the accident; there was no policy violation on the part of the 1st respondent; the respondents are jointly and severally liable to pay the compensation of Rs.1,01,25,000/-.

5. The learned counsel for the appellants/claimants would submit that Ex.P22- TDS form-16 would prove that the income of the deceased at the time of accident was Rs.11,60,866/ - per annum. The Tribunal having accepted that the income of the deceased at the time of accident was Rs.11,60,866/- per annum, erred in taking the annual income of the deceased as Rs.10,00,000/- by including the future prospects of 40%. The learned counsel further argued that the amount of compensation awarded by the Tribunal under various heads is meagre and sought for enhancement of compensation.



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6. The learned counsel for the 2nd respondent-Insurance company would submit that the award passed by the Tribunal is just and proper and does not require interference of this Court.

7. In the instant case, the TDS form that has been given by the appellants to prove the income of the deceased was marked as Ex.P22. As per the said TDS Form, the gross total income of the deceased was Rs.8,95,852/- per annum. Net tax paid was Rs.72,369/-. Towards future prospects, 40% is to be added to the net income. Correct multiplier is 15. After deducting 1/3 for his personal expenses, the loss of income to the dependents is calculated as under:-

Gross total income : 8,95,852/-

Net tax paid : 72,369/-

Income of the deceased (a-b) : 8,95,852 - 72,369 = Rs.8,23,482/-

Add 40% towards future prospects : 8,23,482/- + 40% = Rs.11,52,875.58

15 multiplier to be applied : 11,52,875.58 x 15 = 1,72,93,133.7/-

After deducting 1/3rd towards

personal expenses : 1,72,93,133.7 – 57,64,377.9

= Rs.1,15,28,755.8



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Loss of income determined by this court : Rs.1,15,28,756/-.

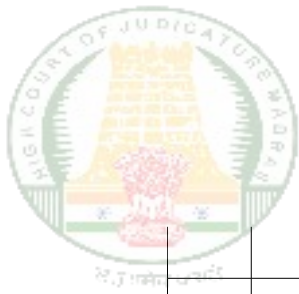
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8. Following the judgement of *Pranay Sethi* [National Insurance Co.Ltd., Vs. Pranay Sethi reported in AIR 2017 SC 5157 under *conventional heads, namely, loss of estate, loss of consortium and funeral expenses, amounts of Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- is granted respectively.*

9. It is also seen that though the appellants have produced the medical bills as per Ex.P8 to the extent of Rs.25,850/-, the tribunal has granted a sum of Rs.25,000/- only towards Medical expenses. Therefore, the same must be enhanced to Rs.25,850/-. Towards transportation, no amount is granted by the Tribunal, therefore, it is reasonable to award Rs.10,000/- as compensation.

10. The compensation granted under other heads are just and reasonable and the same does not require interference of this Court. The modified compensation is as under:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	1,00,00,000.00	Rs.1,15,28,756/-	Enhanced
2.	Loss of consortium	20,000 x 2	(40,000 x 2)	Enhanced



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		40,000	80,000	
3.	Medical expenses	20,000	25,850	Enhanced
4.	Loss of estate	Nil	15,000	Modified
5.	Funeral expenses	25,000	15,000	Reduced
6.	Transportation charges	Nil	10,000	Modified
	Total	1,01,25,000/-	1,16,74,606/-	Enhanced

11. In the result, C.M.A. is partly allowed.

(a) The compensation awarded by the Tribunal at Rs.1,01,25,000/- is hereby enhanced to Rs.1,16,74,606/- [Rupees One crore sixteen lakhs seventy four thousand six hundred and six only] together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

(b) The second respondent-Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment, in the manner as directed by the Tribunal.

(c) The apportionment of the award to the appellants is as under:-

1st appellant-wife – Rs.75,000/-

2nd appellant- minor daughter - Rs.1,15,99,606/-



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(d) On such deposit, the 1st appellant/wife is entitled to withdraw the same along with accrued interest. As far 2nd appellant/minor claimant is concerned, her share shall be invested in any one of the Nationalized Banks until she attain majority and the 1st appellant being her mother and natural guardian is permitted to withdraw the interest once in three months for the maintenance and welfare of the 2nd appellant.

(e) No costs.

Index : Yes / No
Internet : Yes
sk/nvsri

(J.N.B,J.) (R.S.V., J.)
09.12.2024

J. NISHA BANU, J.
and
R.SAKTHIVEL,J.

sk/nvsri

To

The Special District Judge, MCOP Tribunal at Salem.



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