



C.M.A.No.3010 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2024

CORAM:
THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.3010 of 2021
and CMP.No.13563 of 2021

1. Bashirabee

2. Bathrunisa

... Appellants

Vs.

1. R. Vinothraj

2. United India Insurance Co.Ltd.,
TP Hub, Silingi Building
No.134, Greams Road,
Chennai 600 006.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 09.03.2020 made in M.A.C.T.O.P. No.6131 of 2018 on the file of Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellants : Mrs.P.T.Saleem Fathima



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For R2 : Mr.D. Bhaskaran

For R1 : Exparte

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellants seeking enhancement of compensation granted by the Tribunal in the award dated 09.03.2020 made in M.A.C.T.O.P.No.6131 of 2018 on the file of Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

2. The appellants are claimants in M.A.C.T.O.P. No.6131 of 2018 on the file of Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai. The appellants filed claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of their son viz., Shabir Basha, who died in the accident that took place on 11.09.2018.

3.Facts of the Case:-

According to the appellants, on 11.09.2018 at about 8:45 hrs, the deceased was travelling as a pillion rider in the motor cycle bearing No.TN19



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AJ 2314 from South to North at Kanathur, ECR Road near by Ameet

Hospital, Chennai. The rider of the motor cycle ridden in a rash and negligent manner and hit behind the car bearing No.PY05 W 9699. Due to which the deceased was thrown away, sustained head injury and multiple fatal injuries all over the body and taken treatment at Chettinad Hospital, Royapettah Hospital and Rajiv Gandhi Government Hospital and died. At the time of accident, the deceased was aged about 19 years and he was studying B.Com., II year at Mohamed Shadhak College, Sholinganallur and also doing part time job in a private sector and earned Rs.10,000/- per month. The first respondent is the driver cum owner and the second respondent is the insurer of the motor cycle. Both of them statutorily and vicariously liable to pay compensation to the petitioners with interest and costs. Hence, they claimed a sum of Rs.50,00,000/- as compensation before the Tribunal.

4. The first respondent remained exparte before the Tribunal and the second respondent Insurance Company contested the case.

5. Before the Tribunal, the 1st appellant/mother of the deceased



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examined herself as P.W.1, and examined one eye witness as P.W.2 and marked Ex.P1 to Ex.P.10. On behalf of the respondents neither witnesses were examined nor exhibits were marked.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent act of rider of the 1st respondent vehicle and awarded a sum of Rs.15,47,000/- as compensation and directed respondents 1 and 2 to pay together with interest at 7.5% p.a. from the date of filing of the application till the date of realisation, excluding the default period if any with proportionate costs. The Tribunal dismissed the claim of the 2nd petitioner/claimant who is the sister of the deceased.

7. The learned counsel appearing for the appellants submitted that the deceased was aged 19 years at the time of accident and was studying 2nd year B.Com., at Mohamed Shadhak College, Sholinganallur. The notional income fixed by the Tribunal is very meagre. The Tribunal has not awarded any amount towards Transportation Expenses and loss of estate. The amounts



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awarded by the Tribunal under different heads are also meagre and hence prayed for enhancement of compensation.

8. The learned counsel appearing for the 2nd respondent/Insurance Company denied all the averments made by the appellants. Though the appellants have stated that the deceased was working in a private company, they have not filed any document to prove the avocation and income of the deceased. The name of the private company in which the deceased was working is also not mentioned. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

9. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on record.

10. The Tribunal has fixed notional income of the deceased as Rs.10,000/- p.m. accepting the claim of the claimant that he was earning Rs.10,000/- p.m. Even though the claimants have stated in the claim petition



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that the income of the deceased is Rs.10,000/- but they have claimed

Pecuniary Loss of income to the extent of Rs.32,15,000/-. This Court in umpteen number of judgments has held that while awarding compensation, if the Tribunal or the Court is of the view that the compensation payable to the claimants is more than the claimed amount then the Just compensation as arrived has to be awarded. In this case even though Rs.10,000/- is claimed as monthly income of the deceased, considering the age and fact that the deceased was a IIInd year B.Com., student and the date of the accident, fixing of Rs.10,000/- p.m. as monthly income is on the lower side. This Court while awarding compensation for the death of IIIrd year Engineer student has fixed the notional income at Rs.15,000/- and Rs.20,000/- per month respectively in the case of *P.Manjula and others Vs Balineni Sai Venkat Nitheesh and others* reported in [MANU/TN/2425/2020] and yet in another judgment in the case of *The Managing Director, Tamil Nadu State Transport Corporation (Salem) Limited, Salem Vs Neela and others* in CMA.No.943 of 2021 dated 18.03.2021 for the accident which took place in the year 2016 and 2010. This Court is inclined to fix notional income of the deceased at Rs.15,000/- per month instead of Rs.10,000/- per month fixed by the Tribunal. The deceased



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was aged 19 years at the time of accident. The Tribunal has awarded 40% enhancement towards future prospects which is proper. Since the deceased was a Bachelor, aged 19 years at the time of accident, the Tribunal applied the multiplier '18' and deducted 1/2 towards personal expenses of the deceased. In view of the same, the amount awarded by the Tribunal towards loss of dependency is enhanced to Rs.22,68,000/- [(Rs.15,000/- + 6,000/- (Rs.15,000/- x 40%) x 12 x 18 x 1/2)]. As per the Hon'ble Apex Court in ***United India Insurance Co. Limited v. Satinder Kaur and Ors.*** [MANU/SC/0500/2020 : (2021) 11 SCC 780], the compensation awarded under the head loss of love and affection is comprehended with loss of consortium, accordingly, the mother of the deceased is entitled to Rs.40,000/- under the head loss of consortium and the compensation of Rs.20,000/- awarded under the head loss of love and affection is set aside. The Tribunal has not awarded any amount towards loss of estate and this Court is inclined to award Rs.15,000/- and the other heads are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
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1.	Loss of dependency	15,12,000/-	22,68,000/-	Enhanced
2.	Loss of love & affection	20,000/-	-	set aside
3.	Loss of consortium		40,000/-	Granted
3.	Loss of Estate	-	15,000/-	Granted
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total Award	Rs.15,47,000/-	Rs.23,38,000/-	Enhanced

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,47,000/- is hereby enhanced to Rs.23,38,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st appellant/mother is directed to pay necessary Court fee, if any, on the enhanced compensation. The 1st and 2nd respondents are directed to deposit the enhanced award amount now determined 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. On such deposit, the 1st appellant/mother is permitted to withdraw her share of the enhanced award amount on the basis of apportionment fixed by the Tribunal along with



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proportionate interest and costs, less the amount if any, already withdrawn by
filing necessary applications before the Tribunal. No costs. Consequently
connected miscellaneous petition is also closed.

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Index : Yes / No

Internet : Yes/ No



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K. RAJASEKAR, J.

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To

1. The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes,
Chennai.

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

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