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C.M.A.No.1114 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.1114 of 2023

1.Murali
2.Vimala

...Appellant

Vs

1.V.Rajkumar
2.The New India Assurance Co., Ltd.,
Motor Third Party Claims,
No.232, Bombay Mutual Building,
6th Floor, NSC Bose Road,
Chennai 600 001.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award against the judgment and decree dated 05.01.2023 and made in MACTOP.No.4504 of 2019 on the file of the MACT, Chief Judge, Court of Small Causes, Chennai.

For Appellant : Ms.A.Subadra

For Respondent : R1 – Notice Dispensed with
Mr.C.Johnson, for R2



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JUDGMENT

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This appeal has been filed challenging the quantum of compensation awarded by the Tribunal vide order dated 05.01.2023 made in MACTOP.No.4504 of 2019 on the file of the MACT, Chief Judge, Court of Small Causes, Chennai.

2. The learned counsel for the appellants would submit that on 16.06.2019, while the appellants' father was walking along Walajabad Road, a van bearing Registration No.TN-11-AA-9113 came in a rash and negligent manner and dashed against the appellants' father, due to which he was died on the spot. Considering all the aspects the Tribunal had awarded the following compensation:

<i>S.No</i>	<i>Particulars</i>	<i>Compensation (Rs.)</i>
1	Loss of Income	5,80,800
2	Loss of Estate	15,000
3	Loss of Consortium	80,000
4	Funeral Expenses	15,000
	Total	6,90,800

3. Further, he would submit that at the time of accident, the deceased was



aged about 53 years and there are two legal heirs, who are the son and daughter of the deceased. He would also submit that the deceased was working as a security in Crescent Engineering College and was earning a sum of Rs.18,000/-. In this regard, he had also referred to FIR, wherein it was recorded that the deceased was working as a security in Crescent Engineering College. However, no document has been produced with regard to the salary drawn by the deceased and in the absence of salary certificate, the Tribunal had fixed a sum of Rs.8000/- as notional income of the deceased, which is on lower side. Hence, she requests this court to enhance the same.

4. She would also contend that the Tribunal had wrongly deducted 1/2 instead of 1/3 towards personal expenses of the deceased. Hence, she requests this Court to re-determine the compensation awarded by the Tribunal towards loss of income of the deceased.

5. In reply, the learned counsel appearing for the respondent would submit that the legal heirs, who are son and daughter of the deceased, had already got married. Hence, taking this aspect into consideration, the Tribunal



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had rightly deducted 50% towards personal expenses of the deceased while determining the loss of income and deducted 1/2 towards personal expenses of the deceased. Therefore, he would submit that there is no error in the award passed by the Tribunal and requests this Court to confirm the same.

6. Further, he would contend that since the legal heirs of the deceased had already got married, the amount awarded by the Tribunal for a sum of Rs.40,000/- each towards loss of love and affection is not correct and hence, he request this court to re-determine the same. However, he would fairly submit that any reasonable amount may be fixed as notional income of the deceased.

7. Heard the learned counsel for the appellant and the respondent and also perused the materials available on record.

8. In the present case, the accident was occurred on 16.06.2019 and at the time of accident the deceased, who was aged about 52 years, was working as Security in Crescent Engineering College. In the absence of salary certificate, the Tribunal had fixed the notional income has a sum of Rs.8,000/- and added



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10% towards future prospect.

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9. In the FIR, it has been shown that the deceased was working as Security in the Crescent Engineering College and there is no dispute on the fact that the accident was occurred in the year 2019. When such being the case, there is no doubt that in the year 2019, no one will go for job of Security in an Engineering College for salary which is less than a sum of Rs.15,000/-. In the present case, though the claimants had claimed for a sum of Rs.18,000/- as notional income, in the absence of proof this Court is inclined to fix the notional income of the deceased as a sum of Rs.15,000/- for awarding compensation towards loss of dependency.

10. Further, the learned counsel for the appellants had contended that the deceased was staying with his son and contributed his salary to the family of his son, who is aged about 32 years and working as Auto driver. With regard to the said submission, this Court feels that the same is not believable since a married person cannot be a dependent to his father's income and only father can be a dependent to his son at this age. Thus, the said analogy of the appellant is not



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acceptable. Hence, this Court is of the view that the Tribunal had rightly deducted 1/2 towards the personal expenses of the deceased.

11. Therefore, considering the age of the deceased, this Court is inclined to add 10% as future prospects and apply 11 as multiplier. Accordingly the loss of dependency would be calculated as follows:

$$\text{Rs.15,000/- (notional income) + Rs.1500/- (10\% future prospects) * 11 (multiplier) * 12 (months) * } \frac{1}{2} \text{ (personal expenses) = Rs.10,89,000/-}$$

12. As far as the loss of consortium is concerned, the Tribunal had awarded a sum of Rs.80,000/- for the claimants, who are already married, which is not correct and hence, the same is reduced to a sum of Rs.40,000/- (Rs.20,000/- each). Further, it appears that no amount was awarded towards Transportation and hence, this Court is inclined to award a sum of Rs.10,000/- for the same. With regard to all the other heads, the compensation awarded by the Tribunal appears to be just and reasonable. Hence, the same stands confirmed.

13. Accordingly, the compensation awarded by the Tribunal is modified as follows:



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S.No	Particulars	Compensation awarded by the Tribunal (Rs.)	Compensation awarded by this Court (Rs.)
1	Loss of Income	5,80,800	10,89,000
2	Loss of Estate	15,000	15,000
3	Loss of Consortium	80,000	40,000
4	Funeral Expenses	15,000	15,000
5	Transportation	Nil	10,000
	Total	6,90,800	11,69,000

14. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.11,59,000/-. Accordingly, the award amount stands enhanced from a sum of Rs.6,90,800/- to Rs.11,69,000/-. In all other aspects, the award of the Tribunal stands confirmed. It is also made clear that the compensation will be awarded to the claimants in the following proportions:

- i) Son of the deceased – Rs.5,69,000/-
- ii) Daughter of the deceased – Rs.6,00,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the 2nd respondent/insurance company is directed to deposit a sum of Rs.11,69,000/- along with interest and costs, less the amount already deposited,



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if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.4504 of 2019 on the file of the Chief Judge, Court of Small Causes, Chennai. Thereafter, the Tribunal is directed to transfer the entire award amount to the respective bank accounts of the appellants, as per the proportion determined by this Court, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained for the claimant or application for withdrawal from the claimant, whichever is earlier. No costs.

19.02.2024

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

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KRISHNAN RAMASAMY,J.

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