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CMA.No.2372 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM:

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

CMA.No.2372 of 2022

1.Lakshmi
2.Kalaivanan

... Appellants

-Vs-

1.K.Govindaraj
2.United India Insurance Co. Ltd.,
No.134, Greams Road, IV Floor, Anna Salai,
Chennai – 600 006.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05-01-2022 and made in M.A.C.T.O.P.No.7632 of 2018 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant	: Mr.F.Terry Chella Raja
For R1	: Ex-parte
For R2	: Mr.D.Venkatachalam



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JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 05.01.2022 made in MACT.OP.No.7632 of 2018 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.The appellants are the claimants in MACT.OP.No.7632 of 2018 on the file of *Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai*. They filed the above said claim petition, claiming a sum of **Rs.40,00,000/-** as compensation for the death of their minor son Mohit, who died in an accident that took place on 15.10.2018.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of **Rs.7,40,000/-** as compensation to the appellants.



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4. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5. The learned counsel for the appellants submitted that the Tribunal fixed the notional monthly income of the victim of the accident at Rs.5,000, added 40% of it towards future prospects and deducted $\frac{1}{2}$ of it towards the personal expenditure of the victim and arrived at the net value of monthly income at Rs.3,500/-, applied 15 as the multiplier and arrived at a sum of Rs.6,30,000/- towards loss of dependency.

6. The learned counsel contended that the notional income as fixed by the Tribunal is on the lower side. Further, he would contend that the Tribunal deducted $\frac{1}{2}$ towards the personal expenditure of the victim of the accident. The learned counsel relied on the ratio in ***Kishan Gopal & another Vs. Lala & others*** [2013(2) TN MAC 358(SC)] wherein the Hon'ble Apex Court has not deducted any amount towards the personal



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expenditure of the victim of the accident, who was 10 years old at the time of the accident. Accordingly, the finding of the Tribunal to that extent has to be set aside.

7.The learned counsel appearing for the second respondent insurance company would submit that as far as the deduction towards personal expenditure is concerned, he fairly submitted that in this regard the Hon'ble Apex Court in ***Kishan Gopal & another Vs. Lala & others*** case has not deducted any amount. However, with regard to the fixation of the notional income of the victim at Rs.5,000/-, he submitted that the same is just and fair.

8.Considering the submissions of the learned counsel for the appellant as well as the second respondent, this Court feels that the sum of Rs.5,000/- fixed as the notional monthly income is just and fair and the same is confirmed. With regard to the deduction of $\frac{1}{2}$ towards the personal expenditure of the victim is concerned, the same is not appropriate and the said finding is set aside. Accordingly, the loss of dependency of the deceased is redetermined as below;



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$$5,000 \times 12 \times 15 = 9,00,000/-$$

By adding 40% future prospects, the loss of dependency

would be sum of Rs.9,00,000 + 3,60,000 = 12,60,000/-

9. With regard to the compensation awarded by the Tribunal under other heads are concerned, the same is just and fair and accordingly, it stands 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 reduced or granted
1.	Loss of dependency	6,30,000/-	12,60,000/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Loss of Love and Affection	80,000/-	80,000/-	Confirmed
4	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.7,40,000/-	Rs.13,70,000/-	Enhanced by Rs.6,30,000 /-



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10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at **Rs.7,40,000/-** is hereby enhanced to **Rs.13,70,000/-** together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd 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, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment to the credit of **M.C.O.P.No.7632 of 2018** on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai. On such deposit being made, the Tribunal is directed to transfer the entire award amount to the Bank accounts of the Appellants/Claimants through RTGS, in equal proportion, within a period of **three weeks thereafter**. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving interest for the period of delay in question, the interest portion for that period should be excluded for the purpose of granting interest.

No costs.



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22.01.2024

To

- 1.Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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KRISHNAN RAMASAMY, J.,

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