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C.M.A.No.1699 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

C O R A M

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

C.M.A.No.1699 of 2023
& CMP.No.16661 of 2023

M/s.Bajaj Allianz General Insurance Company Limited,
GE Plaza, Airport Road,
Erwada, Pune 411 006.

...Appellant

Vs

1.Ezhilarasi
2.Manikandan, S/o.Rasu
3.Manikandan, S/o.Krishnamurthy

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgement dated 24th August, 2022 passed in MCOP.No.69 of 2019, by the Motor Accident Claims Tribunal (Principal District Judge), Ariyalur.



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For Appellant : Mr.R.V.Sivaraj

For Respondents : Mr.P.Parthikannan, for R1 and R2
R3-died.

JUDGMENT

This civil miscellaneous appeal has been filed challenging the judgement dated 24.08.2022 in MCOP.No.69 of 2019.

2. The learned counsel for the appellants would submit that on 21.03.2015, while the deceased Mukilesh was walking near the Kalladikuttai Vaaikaal, a tractor bearing Registration No.TN-49-AY-3337 came in a rash and negligent manner and dashed against the deceased, due to which he died on the way to the Hospital. Considering all the aspect the Tribunal had awarded the following compensation:

<i>S.No</i>	<i>Particulars</i>	<i>Compensation (Rs.)</i>
1	Loss of Income	7,20,000
2	Loss of Love and Affection	15,000
3	Funeral Expenses	15,000
	Total	7,50,000



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3. In the present case, there is no dispute with regard to the fixation of negligence. However, the challenge is only with regard to the quantum of compensation awarded by the Tribunal.

4. According to the learned counsel for the appellant, the notional income of the deceased fixed by the Tribunal i.e., a sum of Rs.5,000/- is on the higher side. Therefore, he requests this Court to fix a sum of Rs.3,000/- as notional income of the deceased. In this regard, he had referred to the judgment of the Hon'ble Apex Court in ***Rajendra Singh and others vs. National Insurance Co.Ltd and others*** reported in ***2020 ACJ 2211***. Further, he would contend that while calculating the compensation towards loss of income, the Tribunal had wrongly applied the multiplier as '18' instead of '15'. Hence, he requests this Court to consider the above aspects and re-determine the compensation awarded by the Tribunal.



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5. In reply, the learned counsel for the respondent would submit that since the accident occurred in the year 2015, the Tribunal had rightly awarded the compensation and hence, he requests this Court to confirm the same.

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

7. In the present case, since the accident occurred in the year 2015, the Tribunal had fixed a sum of Rs.5,000/- as notional income of the deceased. However, in the ***Rajendra Singh*** case, the Hon'ble Apex Court fixed the notional income of the deceased as a sum of Rs.3,000/- for the accident, which occurred in the year 2012. Hence, taking into consideration of all these aspects, the Tribunal had rightly fixed the notional income of the deceased as a sum of Rs.5,000/- and this Court does not find any fault in the same. Therefore, the notional income of the deceased fixed by the Tribunal stands confirmed.



8. As far as the multiplier is concerned, as per the law laid down by the Hon'ble Apex Court in ***Sarla Verma & others vs. Delhi Transport Corporation & another*** reported in ***2009 (2) TNMAC 1 SC***, the multiplier '15' has to be applied for the age group below '15'. However, in the present case, the Tribunal had wrongly applied the multiplier '18' instead of '15'. Hence, by deducting 1/3 towards the personal expenses of the deceased, the loss of dependency shall be calculated as follows:

$$\begin{aligned} & \text{Rs.5,000 (notional income) *15 (multiplier)} \\ & *12 \text{ (months) * } 2/3 \text{ (dependency) = Rs.6,00,000/-} \end{aligned}$$

9. Further, it appears that the Tribunal had awarded compensation of a sum of Rs.15,000/- under the head “loss of Love and affection”, which is on lower side. Hence, this Court is inclined to award a sum of Rs.80,000/- (Rs.40,000 each) to the claimants. It is also appears that no amount was awarded by the Tribunal towards Transportation. Hence, this Court is inclined to award a sum of Rs.10,000/- under the head “Transportation”. 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	7,20,000	6,00,000
2	Funeral Expenses	15,000	15,000
4	Transportation	Nil	10,000
5	Loss of Love and Affection	15,000	80,000 (40,000 each)
	Total	7,50,000	7,05,000

10. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.7,05,000/-. Accordingly, the award amount stands reduced from a sum of Rs.7,50,000/- to Rs.7,05,000/-. In all other aspects, the award of the Tribunal stands confirmed.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and since the learned counsel for the appellant had submitted that the entire award amount has already been deposited and 50% of the said amount has already been withdrawn by the claimants, after the payment of amount awarded by this Court i.e., a sum of Rs.7,05,000/- along with interest and costs, if any, the excess amount shall be returned to the appellant/insurance company. Further, the Tribunal is directed to transfer the award amount to the respective bank



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accounts of the claimants, 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. Consequently, the connected miscellaneous petition is also closed.

22.01.2024

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

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To:

The Motor Accident Claims Tribunal,
Principal District Judge, Ariyalur.



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KRISHNAN RAMASAMY,J.

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