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C.M.A.No.1198 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.1198 of 2023

1. S.Prema

2. K.Sekar

... Appellants/Petitioners

Vs.

1. L.Karthikeyan

2. The New India Assurance Co. Ltd.,
TP Claim Hub,
Bombay Mutual Buildings, 6th Floor,
N.S.C.Bose Road,
Chennai 600 001.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree in M.C.O.P.No.6039 of 2019 dated 29.07.2022 on the file of the Motor Accident Claims Tribunal/(Chief Judge, Court of Small Causes, Chennai).

For Appellants : Ms.Ramya V. Rao

For R1 : Notice Served, No appearance

For R2 : Mr.N.Somasundar



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JUDGEMENT

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This Civil Miscellaneous Appeal has been filed by the appellants/claimants, challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal/Chief Judge, Court of Small Causes in M.C.O.P.No.6039 of 2019 dated 29.07.2022.

2. On 26.10.2019 at about 13.00 hours, when the minor deceased was travelling as a pillion rider in a motorcycle bearing Reg.No.TN 11AL 1236, which was driven by the rider of motorcycle, in a rash and negligent manner, at that time, an unknown car, which came from opposite direction took a turn on the right side of Manimangalam junction salai and rider of the motor cycle did not see the car and hit the left side body of the car. Due to the impact, the rider of the motorcycle lost his control and fell down on the road, thereby, the pillion rider sustained fatal injuries all over his body and died. Hence, the appellants, who are the parents of the deceased, made a claim petition before the Tribunal, claiming a compensation of Rs.25,00,000/-.

3. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.4,36,167/- towards compensation to the appellants. Being



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not satisfied with the said compensation, the appellants have filed the present

appeal.

4. The learned counsel for the appellants submitted that, at the time of accident, the deceased was aged about 16 years, and was studying 12th standard, and he was a brilliant student. Had he been alive, he would have earned a lot of money. However, without considering the same, the Tribunal had erroneously fixed the notional income of the deceased at **Rs.40,000/-** per annum and awarded a sum of **Rs.4,26,667/-** towards “Loss of Dependency”, which appears to be very low, and the same may be modified by this Court. Further, the learned counsel relied upon the decisions of this Court in similar cases, wherein, this Court fixed the notional monthly income of the deceased at Rs.9,000/- per month and even in some other cases, the notional income of the deceased, therein was fixed at a sum of Rs.12,000/- and 15,000/- per month. Further, she particularly referred to the judgment of this Court in C.M.A.3093 of 2023, dated 02.01.2024. In the said case, the deceased was aged about 16 years, and, the notional income of the deceased was fixed at Rs.9,000/- per month. Hence, she requested this Court to fix the notional income of the deceased at Rs.9,000/- per month in the present case also.



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5. Per contra, the learned counsel appearing for the second respondent/Insurance Company relied upon the judgement of Hon'ble Apex court in the case of ***Heeralal vs. Ramprasad (SC)*** reported in ***2022 (4) TAC 725: 2023 ACJ 627***, wherein the Tribunal had fixed the notional monthly income of the deceased at a sum of Rs.4,000/-, in the case of deceased at the age of 20 years old. Further, he relied upon the decision of Three Member Bench of Hon'ble Apex Court, in the case of ***Shri Nagar Mal and others vs. Oriental Insurance Company Ltd and others*** reported in ***AIR 2018 Supreme Court 568***, wherein, the accident occurred in the year 2008, and the notional income of the deceased, who was aged about 20 years, was fixed at a sum of Rs.6,000/- per month. Hence, he submitted that the amount awarded by the Tribunal is just and fair, which requires no interference.

6. Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

7. The fact and manner of the accident is not disputed by the parties. Therefore, this Court is not dealing with the said aspect. In the present case, as noticed above, the deceased was aged about 16 years and considering the



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submissions made by the learned counsel on both sides, this Court is of the considered view, that decision in the case of *Shri Nagar Mal and others* as stated *supra*, cannot apply to the facts of the present case, as in the said case, the Hon'ble Apex Court fixed the notional income of the deceased at Rs.6,000/- per month, for the occurrence of accident took place in the year of 2008, whereas in the case on hand, the accident is of the year 2019. Under these circumstances, this Court feels it appropriate to fix the notional monthly income of the deceased at Rs.9,000/-, which would be just and reasonable. Thus, by fixing the notional income of the deceased at Rs.9,000/- per month; adding future prospects at 40%, as has been held by the Constitution Bench of the Apex Court, the total income per month is quantified at Rs.12,600/-. Since the deceased was a bachelor at the time of the accident, 50% has to be deducted towards his personal and living expenses. Accordingly, the loss of income to the family is arrived at Rs.6,300/- per month and the deceased was aged about 16 years at the time of accident as evidenced from the records, adopting the multiplier '18' as per the decision of Hon'ble Apex Court, the loss of income to the family is arrived at Rs.13,60,800/-, which is worked out as follows:-



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<i>Loss of Income</i>	<i>Amount in Rs.</i>
Notional income (Per month)	9,000
Add: Future Prospects (Rs.9,000 x 40%) (Per month)	3,600
	12,600
Less: Personal expenses (50%) (Rs.12,600/- x 1/2) (Per month)	6,300
Notional income (per annum) (Rs.6,300/- x 12)	75,600
Multiplier	18
Total	13,60,800/-

8. Consequently, the sum of **Rs.4,26,667/-** awarded by the Tribunal under the head of 'Loss of Income' is hereby modified and enhanced to **Rs.13,60,800/-**. Further, this Court finds that the Tribunal has awarded a sum of **Rs.5,000/-** under the head of “loss of consortium”, which appears to be very low, and the same is enhanced and modified to a sum of **Rs.80,000/-**.

9. A sum of **Rs.2,000/-** awarded by the Tribunal under the head of “loss of funeral expenses”, and sum of **Rs.2,500/-** towards “loss of estate” which also appears to be very low, and the same is enhanced and modified to a sum of **Rs.15,000/-** each.

10. Thus, the compensation awarded by the Tribunal is modified as



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under:-

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<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of income	4,26,667/-	13,60,800/- (enhanced)
Loss of consortium (father and mother of the deceased)	5,000/-	80,000/-
Funeral expenses	2,000/-	15,000/-
Loss of estate	2,500/-	15,000/-
Total	4,36,167/-	14,70,800/-

11. The appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.4,36,167/-** to **Rs.14,70,800/-**. The second respondent/Insurance Company is directed to deposit the said amount along with interest and cost, 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.6039 of 2019 on the file of Chief Judge, Court of Small Causes, Chennai. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the bank account of the appellants, as per the proportion determined by the Tribunal, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimants or application for withdrawal from the claimants, whichever is later. The appellants/claimants are directed to pay the



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necessary Court fee for the enhanced compensation amount, if required. The

Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee has been produced by the claimant. No costs.

28.02.2024

Index : Yes / No

NCC : Yes / No

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To

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

Krishnan Ramasamy,J.,



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