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C.M.A.No.1783 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2024

C O R A M

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

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- 1.Maheswari
- 2.Naveen (minor)
- 3.Lenin Bala (minor)
- [*** minors represented by 1st appellant]
- 4.Pushpa
- 5.Chellappan

...Appellant

Vs

- 1.B.Shanthi
- 2.HDFC ERGO General Insurance Co. Ltd.,
New No.528, Old No.559, 2nd Floor,
Anna Salai, Teynampet, Chennai 18.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order dated 31.01.2023 in MCOP.No.4393 of 2017 passed by the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai and award compensation in a just and equitable manner.



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For Appellant : Ms.Y.Jayanthi, for Mr.J.Mahalingam

For Respondent : Mr.S.Arunkumar for R2

JUDGMENT

This civil miscellaneous appeal has been filed challenging the judgment and decree dated 31.01.2023 in MCOP.No.4393 of 2017.

2. The learned counsel for the claimant would submit that on 09.12.2013 while the deceased was riding his motor cycle bearing Registration No.TN-21-AZ-4628 at GST Road, near Maduranthagam along with his wife and son, the car bearing Registration No.TN-07-BQ-9048 came in a rash and negligent manner and dashed against the deceased, due to which he was died on the spot. Considering all the aspects, the Tribunal had awarded the compensation in the following manner:

<i>S.No</i>	<i>Heads</i>	<i>Compensation (Rs.)</i>
1	Loss of dependency	17,01,000
2	Loss of Estate	16,500
3	Funeral Expenses	16,500



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<i>S.No</i>	<i>Heads</i>	<i>Compensation (Rs.)</i>
4	Loss of Consortium	2,20,000
5	Medical Bills	20,000
6	Transportation Expenses	5,500
	Total	19,79,500

3. He would further submit that the deceased was working as a Lorry driver and was earning a sum of Rs.13,000/-, for which the proof has also been produced before the Tribunal. However, without considering the same, the Tribunal had fixed the notional income as a sum of Rs.9,000/-, hence, he requests this Court to enhance the same.

4. The learned counsel for the respondent would submit that the notional income fixed by the Tribunal is just and reasonable and hence, he requests this Court to confirm the same. Further, he would request this Court to fix a sum of Rs.10,000/- as notional income if this Court is inclined to enhance the notional income of the deceased. He would also contend that the Tribunal had awarded a sum of Rs.2,20,000/- towards Loss of Consortium for 5 claimants and the same is on higher side. Hence, he requests this Court to re-determine the same.



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5. Heard the learned counsel for the appellant and the respondents and also perused the documents available on records.

6. In the present case, for the accident occurred in the year 2013, the Tribunal had fixed a sum of Rs.9,000/- as notional income of the deceased, who was a Lorry driver, which is on lower side. Hence, taking into consideration of the year of accident and age and avocation of the deceased, this Court is inclined to fix a sum of Rs.12,000/- as notional income of the deceased. Therefore, by taking 40% towards future prospects and deducting 1/4th towards personal expenses of the deceased, the loss of income would be calculated as follows:

$$\begin{aligned} & \text{Rs.12,000/- (notional income) + Rs.4,800/- (40\% future prospects)} \\ & * 12 \text{ (months)} * 15 \text{ (multiplier)} * 1/4 \text{ (deduction towards personal expenses)} \\ & = \text{Rs.22,68,000/-} \end{aligned}$$

7. Further, it appears that the Tribunal had awarded a sum of Rs.2,20,000/- towards loss of consortium for 5 claimants, which is on higher



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side. Hence, the same stands reduced to a sum of Rs.2,00,000/- (Rs.40,000/- each) for the 5 claimants. With regard to the all the other heads, since the compensation awarded by the Tribunal appears to be just and fair, the same stands confirmed.

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

<i>S.No.</i>	<i>Heads</i>	<i>Compensation awarded by Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
1	Loss of dependency	17,01,000	22,68,000
2	Loss of Estate	16,500	16,500
3	Funeral Expenses	16,500	16,500
4	Loss of Consortium	2,20,000	2,00,000
5	Medical Bills	20,000	20,000
6	Transportation Expenses	5,500	5,500
	Total	19,79,500	25,26,500

9. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.25,26,500/-. Accordingly, the award amount stands increased from a sum of Rs.19,79,500/- to Rs.25,26,500/-. In all other aspects, the award of the Tribunal



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stands confirmed. It is also made clear that the compensation will be awarded to the claimants in the following proportions:

- i) Children of the deceased/appellants 2 and 3 – Rs.4,00,000/- each
- ii) Parents of the deceased/appellants 4 and 5 – Rs.2,00,000/- each
- iii) Wife of the deceased/1st appellant – Rs.13,26,500/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the 2nd respondent is directed to deposit a sum of Rs.25,26,500/- along with interest and costs, less the amount already deposited, 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.4393 of 2017 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai. Upon such deposit, the share of the minors 2nd and 3rd appellants i.e a sum of Rs.4,00,000/- each is directed to be deposited in any one of the Nationalised Bank till they attain majority and the 1st appellant being the mother of the minor is permitted to withdraw the accrued interest once in three months for the welfare of the minor. Further, the Tribunal is directed to transfer the shares of the other claimants to their respective bank accounts, by way of RTGS, as per the proportion determined by this Court,



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within a period of three weeks from the date of deposit and receipt of the Bank details obtained from the claimants. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order
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KRISHNAN RAMASAMY,J.

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