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C.M.A.No.2678 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.2678 of 2022

Maragatham

.. Appellant

Vs.

1.K.Shankar

2.The Divisional Manager,
United India Insurance Company Limited,
Cuddalore.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 29.08.2019 made in M.C.O.P. No.78 of 2014 on the file of the I Additional District Judge, Tindivanam.

For Appellant : Mr.K.Arul

For R2 : Mr.Micheal Visuvasam

JUDGMENT

This appeal has been filed by the appellant/claimant seeking enhancement of compensation.



C.M.A.No.2678 of 2022

2.The Tribunal under the impugned award has awarded to the appellant/claimant a compensation of Rs.10,97,800/- as detailed hereunder:

S.Nos.	Head	Amounts awarded by the Tribunal
1.	Loss of dependency	Rs. 9,82,800.00
2.	Loss of love and affection	Rs. 1,00,000.00
3.	Funeral expenses	Rs. 15,000.00
	Total	Rs.10,97,800.00

3.The deceased died as a result of an accident caused by the vehicle, insured with the second respondent. The findings with regard to the negligence have attained finality since no appeal has been filed by any of the respondents. The only question that has to be decided by this Court is whether the compensation awarded by the Tribunal is a just compensation or not and whether the appellant/claimant is entitled for enhancement.

4.The appellant/claimant claimed in the claim petition that the deceased was an Auto Driver at the time of the accident. The Tribunal has fixed the notional monthly income of the deceased at Rs.6,500/- in



C.M.A.No.2678 of 2022

respect of the accident, which happened in the year 2012. Since the appellant/claimant claims that the deceased was an Auto Driver and no contra evidence has been produced by the respondents to disprove the same despite the appellant/claimant has not produced any documentary evidence to prove that the deceased was an Auto Driver, this Court, after giving due consideration to the year of the accident, which happened in the year 2012, is of the considered view that the Tribunal ought to have fixed the monthly income of the deceased at Rs.7,500/- instead of Rs.6,500/-. Accordingly, the notional monthly income of the deceased is enhanced from Rs.6,500/- to Rs.7,500/- by this Court.

5.Insofar as the compensation awarded by the Tribunal under the head Funeral expenses is concerned, the same is a just compensation, which does not call for any interference by this Court.

6.The Tribunal has adopted the correct multiplier and has also made the requisite deduction towards personal expenses of the deceased as per the settled law.



C.M.A.No.2678 of 2022

WEB COPY

7.The Tribunal has erroneously awarded a compensation of Rs.1,00,000/- towards loss of love and affection though the deceased has left behind the appellant/claimant as his only legal heir. As per the settled law, as laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and Others*** reported in ***2017 (16) SCC 680***, the appellant/claimant is entitled for compensation towards loss of love and affection at only Rs.40,000/-. But the Tribunal has erroneously awarded compensation of Rs.1,00,000/- towards loss of love and affection to the appellant/claimant, contrary to the settled law.

8.However, the Tribunal has not awarded any compensation to the appellant/claimant towards Loss of estate, for which the appellant/claimant is legally entitled to. This Court, after giving due consideration to the nature of injuries sustained by the appellant/claimant, fixes the compensation towards Loss of estate at Rs.15,000/-.

9.For the foregoing reasons, the compensation awarded by the Tribunal at Rs.10,97,800/- is modified in the following manner:



C.M.A.No.2678 of 2022

S.Nos.	Head	Amounts awarded by this Court
1.	Loss of dependency	Rs.11,34,000.00
2.	Loss of love and affection	Rs. 40,000.00
3.	Funeral expenses	Rs. 15,000.00
4.	Loss of estate	Rs. 15,000.00
	Total	Rs.12,04,000.00

10. Admittedly, there is a delay on the part of the appellant/claimant in preferring this appeal. At the time of admission of this appeal, it was made clear by this Court that the appellant/claimant is not entitled for any interest for the delayed period. In view of the same, it is made clear that the appellant/claimant is not entitled for any interest for the delayed period of 385 days in preferring this appeal.

11. Accordingly, this Civil Miscellaneous Appeal is partly allowed by enhancing the award amount. The second respondent/insurance company is directed to deposit the enhanced award amount of Rs.12,04,000/-, after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit and cost excluding the delayed



C.M.A.No.2678 of 2022

period of 385 days in preferring this appeal, to the credit of M.C.O.P. No.78 of 2014 on the file of the I Additional District Judge, Tindivanam, within a period of four weeks from the date of receipt of a copy of this judgment.

12.The appellant/claimant is permitted to withdraw the said amount, once it is deposited by the second respondent/Insurance Company, by filing an appropriate application. On such application being made, the Tribunal shall transfer the amount lying to the credit of M.C.O.P. No.78 of 2014 to the bank account of the appellant/claimant directly through RTGS, within a period of one week thereafter. No costs.

03.06.2024

vga
Internet: Yes/No
Speaking Order/Non-Speaking Order



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To



C.M.A.No.2678 of 2022

1. The I Additional District Judge, Tindivanam.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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C.M.A.No.2678 of 2022

ABDUL QUDDHOSE, J.

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C.M.A. No.2678 of 2022

03.06.2024