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CMA.No.3212 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.3212 of 2024

1. Prema
 2. Inbasagaran
 3. Sathyapriya
 4. Rukmani
- ...Appellants

Vs.

1. Kumar
 2. M/s. TATA AIG General Insurance Company Limited,
2nd Floor, Shri Vari Shopping Mall, D.No.2/9,
Near ARRS Multiplex, Meiyanoor,
Salem – 636 004.
- ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, seeking to enhance the compensation amount made in judgment and decree dated 04.10.2023 made in MCOP.No.1462 of 2021 on the file of the Special District Judge, MCOP Tribunal, Salem.

For Appellants : Mr.S.P.Yuaraj

For Respondents : Mr.K.Vinod, for R2
: Notice dispensed with, for R1



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JUDGMENT

Challenging the judgment and decree dated 04.10.2023 made in MCOP.No.1462 of 2021 on the file of the Special District Judge, MCOP Tribunal, Salem, the claimants have come up with this appeal.

2. Mr.K.Vinod, learned counsel takes notice on behalf of the 2nd respondent. In view of the consent expressed by the learned counsel on either side, this appeal is taken up for final disposal at the admission stage itself.

3. Since the 1st respondent remained exparte before the tribunal, notice to the 1st respondent is dispensed with.

4. It is the case of the claimants that, on 21.07.2021 at about 07.45 pm., when the deceased Ramkumar was riding a new two-wheeler without registration in Kolikalnatham to Morapalayam road at Karuppagoundanpalayam near Muthugoundankadu, a TATA ACE vehicle bearing Reg.No.TN-34-AD-0936 owned by the 1st respondent insured



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with the 2nd respondent driven by its driver in a rash and negligent manner came in the opposite direction and dashed against the two wheeler in which the deceased was travelling, due to which the said Ramkumar sustained grievous injuries and succumbed to the same. Thereby, the appellants, who are the dependents of the deceased Ramkumar filed a claim petition in MCOP.No.1462 of 2021 claiming a compensation of Rs.46,00,000/-. Before the Tribunal, the 1st appellant/1st claimant examined herself as P.W.1 and marked Exhibits P.1 to P.10 and on the side of the respondents, no documents were marked and no witnesses were examined. After trial, the Tribunal, on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the driver of the 1st respondent and awarded Rs.34,03,000/- towards compensation for the death of the deceased Ramkumar and held that the 1st and 2nd respondents are jointly and severally liable to pay the above compensation. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have come up with this appeal seeking enhancement of compensation.



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5. Learned counsel for the appellants submitted that the above said accident happened solely due to the rash and negligent driving on the part of the driver of the 1st respondent and the accident is of the year 2021 and at the time of accident, the deceased was aged about 51 years and was working as an Security guard and was earning a sum of Rs.30,000/- per month, however, the tribunal had taken the notional income of the deceased as Rs.10,000/-, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions and thereby, the same has to be interfered with. Further, the compensation awarded under other heads are also on the lower side and the same needs to be enhanced. Accordingly, he prayed for appropriate orders.

6. Per contra, the learned counsel appearing on behalf of the 2nd respondent-Insurance Company contended that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.



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7. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties and the parties have not raised any issue on the aspect of negligence and therefore, this Court is not venturing into the same.

9. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2021 and at the time of accident, the deceased was aged about 51 years and he was a Security guard by profession, however, the Tribunal has fixed the notional monthly income at Rs.10,000/-, which is on the lower side. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in *2014 (1) TANMAC 459*, and also considering the age of the deceased as also the claimants, fixing a notional income of Rs.16,000/- and adding future prospects at 25%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in



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2017 (16) Supreme Court Cases 680, the income per month is quantified at Rs.20,000/-. Deducting 1/4th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.15,000/- per month and the deceased being aged about 51 years, as evidenced from the records, adopting the multiplier of 11 as fixed by the Apex Court in the case of **Sarla Verma and Ors. v. DTC & Ors.** reported in **(2009) 6 SCC 121**, the loss of income to the family is arrived at Rs.15,000/- * 12 * 11 = Rs.19,80,000/-.

10. Insofar as the compensation awarded under the other heads are concerned, the tribunal had awarded a compensation of Rs.80,000/- under the head love and affection, which is very meage and the same has to be modified as Rs.1,60,000/- (40,000/- * 4 = 1,60,000/-), however, the compensation of Rs.40,000/- awarded under the head Loss of consortium separately is rejected. No compensation has been awarded under the head loss of estate, and thereby, this Court awards a sum of Rs.16,500/-. At the same time, the tribunal has awarded a compensation of Rs.25,000/- under the head funeral expenses which is on the higher side and the same is reduced to Rs.16,500/-.



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11. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of dependency	9,90,000/-	19,80,000/-
Loss of love and affection	80,000/-	1,60,000/-
Loss of consortium	40,000/-	-
Loss of estate	-	16,500/-
Funeral Expenses	25,000/-	16,500/-
Total	11,35,000/-	21,73,000/-

12. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.1462 of 2021 is modified by enhancing the compensation amount from Rs.11,35,000/- to **Rs.21,73,000/-**. The 2nd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No.1462 of 2021 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. In the



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above compensation, the 1st appellant is entitled to Rs.7,73,000/- and the 2nd and 3rd appellants are entitled to a sum of Rs.5,00,000/- each and the 4th appellant is entitled to a sum of Rs.4,00,000/- with proportionate interest and costs. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. It is underscored that the appellants are not entitled to any interest for the default period, if any. No costs.

11.12.2024

skt

NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

To:

1. The Special District Judge, MCOP Tribunal,
Salem.
2. The Section Officer,
V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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