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C.M.A.No.2379 of 2022

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 01.02.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.2379 of 2022

1. Shashikala
2. Nagaraj
3. Venkatamma

... Appellants

Vs.

1. M/s.Avis Ergonomics,
No.860/861, Krishna Nivas,
Chettipalayam Road,
Eachanari, Coimbatore- 641 021.
2. The Branch Manager,
New India Assurance Co. Ltd.,
Coimbatore City Branch,
799-D, 1st Floor, Mettupalayam Road,
Near Shanmuga Theatre, Flower Market,
Coimbatore – 641 002.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 02.09.2021 made in M.C.O.P.No.828 of 2020, on the file of the Motor Accident Claims Tribunal/Special District Court, Krishnagiri.



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For Appellant : Mr.S.P.Yuaraj

Respondent-1 : No appearance

For Respondent-2 : Mrs.S.R.Sumathy

JUDGEMENT

Questioning the quantum of compensation awarded by the Tribunal, the present Appeal has been preferred by the appellants/claimants.

2. On 28.04.2019 at about 21.15 hours, when the deceased Ramesh was travelling as a pillion rider in a Motor Cycle, viz., Bajaj Pulsar bearing Registration No.TN-70-Y-8032, ridden by one Vinothkumar, on the left side of the road near Green Tech Towers, at Ring Road from R.C.Church Ring Road to Rayakottai Road in Hosur, Eicher Vehicle, bearing Registration No.TN-99-E-8505 driven by its driver in a rash and negligent manner, came in the opposite direction and dashed the Motorcycle, due to the said accident, both the rider and the pillion rider sustained grievous injuries. Since the pillion rider, viz., the deceased sustained fatal injuries, despite treatment, succumbed to death. Hence, the claimants, being mother, father and grandfather of the deceased filed a Claim Petition



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seeking a sum of Rs.40,00,000/- as compensation.

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3. The Tribunal, on consideration of oral and documentary evidence held that the accident occurred due to rash and negligence on the part of the Driver of the first respondent's Vehicle, Eicher and hence, directed the second respondent/Assurance Company to pay a compensation of Rs.15,47,988/- to the claimants together with interest at the rate of 7.5% p.a. from the date of filing of the Petition and till the date of deposit.

4. Not being satisfied with the quantum of compensation awarded passed by the Tribunal, the appellants/claimants have filed the present appeal seeking for enhancement of compensation.

5. As the present Appeal is filed only questioning the quantum of compensation awarded by the Tribunal, this Court is not traversing into the other aspects of the award passed by the Tribunal.

6. Mr.S.P.Yuaraj, learned counsel appearing on behalf of



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appellants/claimants submitted that the Tribunal, while determining the compensation towards 'Loss of Dependency', fixed the notional monthly income of the deceased at Rs.9,000/- which is meager. The learned counsel would submit that at the time of the accident, the deceased was aged about 25 years, Self Employed (Artists); earning Rs.35,000/- per month, and unmarried leaving behind him his parents and grandmother as dependants, whereas, the Tribunal, in the absence of income proof, fixed the notional income of the deceased only at Rs.9,000/-, which has resulted in awarding inadequate compensation under the said head. The learned counsel further submitted that this Court, in number of cases, where, there is no income proof, used to fix notional monthly income depending on the nature of occupation of the deceased by following the law down by the Hon'ble Supreme Court in the **Syed Sadiq Vs. United India Insurance Company**, reported in **2014 (1) TNMAC 459 (SC)** and hence, payed, the some reasonable amount may be fixed as notional monthly income of the deceased in the present case as well.

7. Despite service of notice on the first respondent, viz., the owner



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of the offending vehicle and their name is printed in the cause list, none has appeared on their behalf. Hence, the first respondent is set ex parte.

8. Ms.S.R.Sumathy, learned counsel for the second respondent/Assurance Company submitted that the award passed by the Tribunal is just and fair and requires no interference.

9. Heard the learned counsel for the appellant/claimant and the learned counsel for the 2nd respondent/Assurance Company and perused the materials on record.

10. As rightly pointed out by the learned counsel appearing for the appellants, this Court, following the ratio deidendi by the Hon'ble Supreme Court, in the case of **Syed Sadiq (cited supra)** wherein, the Honourable Supreme Court even for a vegetable vendor, who sustained injuries in the accident occurred in the year 2008, fixed the notional monthly income at Rs.6,500/- has in fact, disposed of number of cases, by fixing the reasonable amount towards the notional income of the deceased on case to case basis



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depending on the nature of avocation of the deceased, is of the view, it would be appropriate to fix a sum of Rs.14,000/- as notional monthly income of the deceased, as in the present case, the deceased was aged about 25 years at the time of the accident, i.e.2019, doing Job work on Arts, i.e to write Name Boards, Sign Boards and Banners and as an Artists he would have perhaps earned the said income per month. Thus, by fixing the notional monthly income of the deceased at Rs.14,000/-; adding 40% towards future prospects; deducting 50% towards his personal expenses (since the deceased was a Bachelor) and by applying right multiplier of '18' (since the deceased was aged 25 years), the compensation towards Loss of Dependency is calculated as under:-

Notional Monthly income + 40% future prospects
(i.e. Rs.14,000/- + Rs.5,600) = Rs.19,600/-

(Deduction of $\frac{1}{2}$ x (Multiplier of '18')
towards personal expenses)
9,800/- x $\frac{1}{2}$ x 12 x 18 = Rs.21,16,800/-

10.1 Consequently, the sum of Rs.13,60,800/- awarded by the Tribunal under the head of 'Loss of Dependency' is hereby modified and



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enhanced to **Rs.21,16,800/-**.

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10.2 Insofar as the compensation awarded by the Tribunal under all other heads are concerned, this Court finds the same to be just and proper and is hereby confirmed.

10.3. Thus, the total compensation payable to the appellants/claimants under various Heads is as hereunder:-

<i>S.No</i>	<i>Head</i>	<i>Amount granted</i>
1	Loss of Dependency	Rs.21,16,800/-
2	Loss of Estate	Rs. 15,000/-
3	Funeral Expenses	Rs. 15,000/-
4	Filial Consortium (father & mother +grandmother)	Rs. 1,00,000/-
5	Medical Bills	Rs. 50,188/-
6	Ambulance Bill	Rs.7,000/-
Total		Rs.23,03,988/- rounded off to Rs.23,04,000/-

11. Consequently, the total compensation amount of **Rs.15,47,988/-** awarded by the Tribunal is hereby modified and enhanced to **Rs.23,04,000/-**, which shall carry interest at the rate of **7.5%** per annum



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from the date of claim petition till the date of deposit, out of which, first appellant, the mother of the deceased is entitled to a sum of **Rs.12,00,000/-** together with proportionate interest; second appellant, father of the deceased is entitled to **Rs.10,00,000/-** and third appellant, grandmother of the deceased is entitled to a sum of **Rs.1,04,000/-**.

12. In the result, this Civil Miscellaneous Appeal filed by the appellants/claimants is partly allowed on the following terms:-

(i) The second respondent, Assurance Company is directed to deposit the entire amount awarded by this Court equally along with interest at the rate of 7.5 % p.a. and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the second respondent/Assurance Company, the Tribunal shall transfer the amount directly to the claimants' respective bank accounts through RTGS within a period of three weeks



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thereon.

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(iii) The appellants/claimants are entitled to withdraw the entire award amount, less the amount already withdrawn, if any, by making necessary application before the Tribunal.

iv) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any.

v) There shall be no order as to costs.

01.02.2024

To

The Special District Judge,
Motor Accident Claims Tribunal, Krishnagiri.



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Krishnan Ramasamy,J.,
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