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Civil Miscellaneous Appeal No.1814 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1814 of 2022

and

C.M.P.No.13038 of 2022

The Oriental Insurance Company Limited,
represented by its Manager,
G.K.Complex, 1st Floor,
Dharmapuri Main Road,
Pochampalli Taluk,
Krishnagiri District.

... Appellant

Vs.

1.Nandhini
W/o.Sampath

2.Sampath
S/o.Subramani

3.The Correspondent,
Bharani International Matric School,
Mathur Main Road,
Kannandahalli Village and Post,
Bargur Taluk, Krishnagiri District.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.1101 of 2019, dated 03.12.2020 by the Motor Accident Claims Tribunal, Special District Court for Motor Accident Claims Cases,



Civil Miscellaneous Appeal No.1814 of 2022

Krishnagiri.

For Appellant : Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates

For Respondents : Mr.J.Pradeep [R1 & R2]

JUDGMENT

The Insurance Company has preferred this appeal aggrieved by the award in M.C.O.P.No.1101 of 2019, dated 03.12.2020, passed by the Motor Accident Claims Tribunal, Special District Court for Motor Accident Claims Cases, Krishnagiri.

2. The Insurance Company has mainly questioned the quantum of compensation fixed by the Tribunal.

3. The claimants are the parents of the deceased minor child aged about 2½ years. On 04.06.2014, at about 7.45 a.m., the minor child was standing in front of her house and the school bus belonging to the third respondent was driven in a rash and negligent manner and it dashed on the child resulting in the child sustaining fatal injuries and died on the



spot. A First Information Report came to be registered in Crime No.255 of 2014. It is under these circumstances, the claim petition was filed by the parents seeking for compensation.

4. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving of the school bus belonging to the third respondent. Having rendered such a finding, the Tribunal proceeded to decide as to whether the parents are entitled to make the claim for compensation and it was held that they are entitled to maintain the claim petition and receive the claim amount. Thereafter, the Tribunal fixed the compensation payable at Rs.8,90,000/- in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of dependency	7,80,000/-
2.	Loss of consortium	80,000/-
3.	Loss of estate	15,000/-
4.	Funeral expenses	15,000/-
	Total	8,90,000/-

The Tribunal directed the above compensation to be paid with interest at the rate of 7.5% p.a.



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5. Questioning the quantum of compensation awarded by the Tribunal, the appellant insurance company has filed the present appeal.

6. Heard Mr.E.Rajadurai, learned counsel for appellant insurance company and Mr.J.Pradeep, learned counsel for respondents 1 and 2/claimants.

7. This Court carefully considered the submissions made on either side and the materials available on record.

8. This Court also carefully went through the award passed by the Tribunal.

9. The main issue that was urged by learned counsel for appellant insurance company is that the Tribunal has fixed the notional income of the deceased child at Rs.60,000/- p.a. which is on the higher side. Learned counsel, by relying upon various judgments, submitted that the notional income for the minor child cannot exceed Rs.30,000/- p.a. Insofar as the multiplier that was adopted, learned counsel fairly



submitted that the Tribunal ought to have adopted multiplier '15' instead of '13'. Insofar as the other heads under which the compensation was fixed, no serious objections were raised.

10. While fixing compensation for a child, it is important for the Court to take note of the age of the parents. If the age of the parents is low and they are capable of having another child, that becomes a criteria for fixing the notional income. In such cases, the notional income can be at a lower side. The notional income can be fixed in those cases at Rs.30,000/- as suggested by the Apex Court in *Meena Devi v. Nunu Chand Mahto alias Nemchand Mahto and others [(2023) 1 SCC 204]*.

11. This Court has consistently taken a view that insofar as minor children are concerned, the notional income can be fixed between Rs.30,000/- and Rs.60,000/-. Useful reference can be made to the judgment passed in C.M.A.No.2326 of 2023, dated 29.09.2023.

12. In the instant case, the age of the father was 39 years and the age of the mother was 34 years at the time of filing the claim petition. At that age, it is quite unlikely to go for an another child. Therefore, this Court is inclined to fix the notional income at Rs.50,000/- p.a.



Considering the age of the child, multiplier '15' is adopted. Hence, the loss of dependency can be fixed at Rs.7,50,000/- [50,000 * 15].

13. In the light of the above discussion, this Court modifies the compensation in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Loss of dependency	7,80,000/-	7,50,000/-
2.	Loss of consortium	80,000/-	80,000/-
3.	Loss of estate	15,000/-	15,000/-
4.	Funeral expenses	15,000/-	15,000/-
	Total	8,90,000/-	8,60,000/-

14. The compensation awarded by the Tribunal at Rs.8,90,000/- is reduced to Rs.8,60,000/-. The appellant insurance company is directed to deposit the reduced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is partly allowed. No



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costs. Consequently, connected miscellaneous petition is closed.

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12.04.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,
Special District Court for Motor Accident Claims Cases,
Krishnagiri.

N.ANAND VENKATESH, J.

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