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C.M.A. No.3054 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.3054 of 2021

1.A.Kolanjinathan

2.K.Rasavali

3.Minor K.Yogaraja @ Yogaraj

[Minor appellant represented by his father,

A.kolanjinathan, first appellant herein]

... Appellants / Petitioners

Vs.

1. R.Sivakumar

2. The Manager,

Shriram General Insurance Co. Ltd.,

I Floor, Plot No.5, Ramachandran Street,

Saravanan Nagar, Seevarari,

Perungudi, Chennai – 600 096.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 31.08.2021 passed in M.C.O.P. No.3488 of 2018 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Cuddalore.

For Appellants	:	M/s. Ramya V. Rao
For R1	:	No appearance
For R2	:	Mr. S. Dhakshnamoorthy



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No.3488 of 2018, dated 31.08.2021 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Cuddalore.

2. The parties are referred hereunder according to their litigative status and ranking before the Tribunal.

3. The brief facts leading to filing of this appeal is that on 29.05.2018 at about 14.15 hours, the son of the petitioner namely K.Vasantharaja @ Vasantharaj was travelling in a Transport Corporation bus belongs to the first respondent herein along with third claimant and other passengers. The driver of the bus has driven the same in rash and negligent manner and applied sudden brake to avoid hitting on the animal which resulted in, the bus capsized and the said K.Vasantharaja @ Vasantharaj and others were sustained grievous injuries and subsequently, K.Vasantharaja @ Vasantharaj succumbed at Government Hospital, Virudhachalam. The claimants who are the parents and minor brother have



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filed the claim petition seeking compensation for a sum of Rs.40,00,000/- by invoking Section 166 of the Motor Vehicles Act.

4. The first respondent who is the owner of the vehicle has not contested the claim and was remained ex-parte. The second respondent who is the insurer of the bus has contested the claim and contended that the claimants have to prove that the deceased was died while travelling in the bus belongs to the first respondent. They have also disputed the age, income, avocation of the deceased and also dependency.

5. The one of the injured was the claimant herein has also filed separate claim petition in M.C.O.P.No.3489 of 2018 and both the claim petitions were tried together and common evidence was recorded in M.C.O.P.No.3488 of 2018.

6. The Tribunal after considering the evidences placed on record has held that the driver of the bus is a tortfeasor and the respondents are liable to pay compensation. The Tribunal has also quantified the compensation for the death of the deceased at Rs.12,69,600/- and awarded the same in favour of all the claimants.



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7. The claimants aggrieved over the quantum of compensation for the death of the deceased, K. Vasantharaja @ Vasantharaj have approached this Court for seeking enhancement of compensation.

8. The respondents have not filed any appeal against the Common Award passed by the Tribunal.

9. The learned counsel for the claimants has submitted that the deceased herein was a Diploma Holder and Technician however, the Tribunal has not properly fixed the notional income of the deceased and the notional income fixed is also on the lower side, prays to enhance the same.

10. The learned counsel for the Insurance Company has submitted that based on the evidences placed on record, the Tribunal has rightly fixed the notional income and no need for enhancing the compensation.

11. I have considered the rival submissions made on both sides and also perused the records available.



12. Eventhough, the case of the claimants is that the deceased was a

Diploma Holder, working in a Private Concern, no witnesses to speak about his educational qualification, avocation and income has been adduced. Admittedly, no documents to prove his educational qualification has been marked. In the absence of the same, this Court is of the view that the deceased shall be treated as an manual labourer. The Division Bench judgment of this Court in *Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]* has laid down guidelines for fixing the notional income of various categories of persons whose income has not been proved and based on cost of index filed by CBDT, the notional income was permitted to be fixed, based on the Apex Court judgement of *Syed Sadiq Vs. United India Insurance Company [2014 (1) TNMAC 459]*, fixation of compensation to the deceased herein will be appropriate. Accordingly, Rs.14,000/- is fixed as the notional income of the deceased. The Tribunal has rightly followed the dictum as laid down in *National Insurance Co. Ltd., vs. Pranay Sethi and other [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]* and fixed 40% as future prospectus and as per *Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]*, the multiplier is fixed as '18' by considering the age of



the deceased 20 years at the time of the accident. The deceased is a bachelor, hence after deducting 50% of his monthly income towards his personal expenses, the compensation under loss of dependency is assessed as follows:

Annual income (Rs.14,000/- x 12)	= Rs.1,68,000/-
Future prospects @ 40%	= Rs.67,200/-
Yearly income of the deceased	= Rs.2,35,200/-
Yearly contribution to his family (deduction of 1/2)	= Rs.1,17,600/-
Applicable Multiplier '18'	
Total compensation (117600 x 18)	= Rs.21,16,800/-

13. The Tribunal has awarded compensation of Rs.30,000/- under the head loss of love and affection and as per the Judgment of the Hon'ble Apex Court in *National Insurance Co. Ltd., vs. Pranay Sethi and other* [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680], the head loss of love and affection included under the head loss of consortium and the dependants are entitled to get loss of consortium. Recently, the Hon'ble Apex Court in *Magma General Insurance Co. Ltd., vs. Nanu Ram and Others* [2018 (18) SCC 130] has also confirmed that the claimants are entitled to get Rs.40,000/- under the head loss of consortium. Accordingly, a sum of Rs.1,20,000/- is awarded under the head loss of consortium. The Tribunal has rightly awarded a sum of Rs.15,000/- under the head Funeral Expenses



and the same is hereby confirmed and the Tribunal has awarded a sum of Rs.15,000/- under the head Transport Expenses and this Court is of the view that the same is modified to the head Loss of Estate.

14. Accordingly, the Award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of Income	Rs.12,09,600/-	Rs.21,16,800/-	Enhanced
2.	Loss of Love and Affection/Loss of Consortium	Rs.30,000/-	Rs.1,20,000/-	Modified
3.	Transport Expenses/Loss of Estate	Rs.15,000/-	Rs.15,000/-	Modified
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Modified
	Total Compensation	Rs.12,69,600/-	Rs.22,66,800/- -	Enhanced by Rs.22,66,800/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,69,600/- is hereby enhanced to Rs.22,66,800/- [Rupees Twenty Two Lakhs Sixty Six Thousand and Eight Hundred only] together with interest at the rate of 7.5% per



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annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount now awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.3488 of 2018 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Cuddalore. On such deposit, the appellants/claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. The share of the minor appellant is directed to be deposited in any one of the Nationalized Bank till the minor appellant attains majority. On such deposit, the first appellant being the father of the minor appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellant. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. In other aspects the award of the Tribunal shall



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stands confirmed. There shall be no order as to costs in the present appeal.

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The I Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Cuddalore.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K. RAJASEKAR, J.

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