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C.M.A. No. 3159 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.3159 of 2021

1. C. Ranganathan
2. R. Pradeep Kumar (Minor)
3. R. Praveenraj (Minor)
4. R. Priyadarshini (Minor) ... Appellants / Petitioners

Vs.

1. R.K. Constructions
No.19-A, Gummidipoondi Bye Pass Road,
Gummidipoondi Taluk,
Thiruvallur District – 601 201.
2. Magma HDI General Insurance Co. Ltd.,
Legal Dept., South Zone, No.202,
Mandsana Tower, 2nd Floor, Aamirpet,
Hyderabad,
Andhra Pradesh – 500 016. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 22.02.2021 passed in M.C.O.P. No. 3532 of 2017 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.1, Motor Accident Claims Petitions) Small Causes Court, at Chennai Full Additional In-charge of II Court of Small Causes.



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For Appellant : M/s. Amar Dineshbhai Pandiya
For R1 : Notice Dispensed with
For R2 : M/s. R. Sree Vidhya

JUDGMENT

This Civil Miscellaneous appeal has been filed by the seeking enhancement of compensation awarded in M.C.O.P. No. 3532 of 2017, dated 22.02.2021 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.1, Motor Accident Claims Petitions) Small Causes Court, at Chennai Full Additional In-charge of II Court of Small Causes.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

3. On 24.04.2017, at about 21:15 hours, the deceased Sumathi was travelling as a pillion rider in a two wheeler bearing Registration No.TN-07-7065 in G.S.T. Road, while the two wheeler reached opposite to Fish Market, Guduvancherry, at that time a lorry bearing Registration No.TN-18-R-2254, driven by its driver in a rash and negligence manner,



dashed against the two wheeler, thereby causing instantaneous death to the deceased on the spot. A criminal case was registered in Cr.No437/2017 under section 279, 304(A) of IPC on the file of H-2, Guduvancherry Police Station. For the loss of deceased Sumathi, the legal heirs have filed claim petition seeking compensation for a sum of Rs.38,00,000/- by invoking section 149 & 166 (C) of the Motor Vehicles Act, 1988.

4. The first respondent, who is the owner of the lorry remained ex-parte and the second respondent – insurance company filed counter and disputed the age, occupation and income of the deceased and the manner in which the accident has taken place and further contended that the compensation claimed under various heads is on the higher side.

5. The Tribunal after considering the evidence placed on record has held that the accident has taken place only due to the rash and negligence on the part of the first respondent's driver and fixed the liability on the part of the second respondent – insurance company to indemnify the first respondent and to pay compensation to the claimants. The Tribunal also quantified and granted compensation for a sum of Rs.17,37,000/- along



with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

6. Aggrieved over the award, the claimants have come forward with this appeal seeking enhancement of compensation. The respondents have not preferred any appeal against the award.

7. The learned counsel appearing for the claimants submitted that the Tribunal has not properly appreciated the evidence placed on record and fixed a meagre monthly notional income of the deceased as Rs.8,000/- and also the compensation awarded under other heads is on the lower side, hence prays to modify the notional income and to enhance the compensation.

8. The learned counsel appearing for the second respondent - insurance company submitted that the Tribunal after appreciating the evidence placed on record has awarded a just compensation, hence prays to confirm the award.

9. I have considered the submissions made on both sides and



perused the materials available on record.

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10. The major contention raised by the claimants is that the notional income fixed on the part of the deceased by the Tribunal is on the lower side. Admittedly, in this case, the claimants have claimed that the deceased was working as a Tailor and earning Rs.750/- per day, however, the claimants have not produced any oral or documentary evidence to prove the same before the Tribunal, hence considering the age and avocation, the Tribunal has fixed monthly notional income of Rs.8,000/- and awarded compensation under the head loss of income. The Division Bench 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 above observations and considering the age, avocation, date of accident and more particularly, the deceased in this case is woman, this Court is inclined to modify the monthly notional income of the deceased as Rs.13,000/-.



11. The Tribunal has rightly followed the dictum as laid down in *National Insurance Co. Ltd., vs. Pranay Sethi and others [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 '15' by considering the age of the deceased as 39 years at the time of the accident. In this case, the claimants are four in numbers, hence one-fourth ($\frac{1}{4}$) of the income of the deceased is deducted towards her personal and living expenses. Accordingly, the compensation under loss of dependency with modified monthly notional income of Rs.13,000/- is assessed as follows:

Annual income (Rs.13,000/- x 12)	= Rs.1,56,000/-
Future prospects @ 40%	= Rs.62,400/-
Yearly income of the deceased	= Rs.2,18,400/-
Yearly contribution to his family (after deduction of $\frac{1}{4}$)	= Rs.1,63,800/-
Applicable Multiplier	= 15
Total compensation (Rs.1,63,800/- x 15)	= Rs.24,57,000/-

12. The Tribunal has awarded Rs.1,50,000/- under the head loss of love and affection and Rs.40,000/- under the head loss of consortium. As per the Hon'ble Apex Court judgments in *United India Insurance Co.*



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Limited v. Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11

SCC 780] and ***Magma General Insurance Co. Ltd., vs Nanu Ram [2018***

ACJ 2018], the compensation awarded under loss of love and affection is comprehended in loss of consortium. Accordingly, the compensation awarded under the head loss of love and affection is rejected and the claimants who are the husband and children of the deceased are entitled to Rs.40,000/- each as compensation under the head loss of consortium.

13. The Tribunal has awarded Rs.15,000/- each under the conventional heads loss of estate and funeral expenses, this Court is inclined to confirm the same. However, the compensation awarded under the head funeral expenses includes transportation expenses, hence the compensation of Rs.5,000/- awarded under the head transportation expenses is hereby cancelled.

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 dependency	15,12,000/-	24,57,000/-	Enhanced
2.	Loss of consortium	40,000/-	1,60,000/- -	Enhanced
3.	Loss of Love and Affection	1,50,000/-	---	Cancelled
4.	Loss of Estate	15,000/-	15,000/-	Confirmed
5.	Transport charges	5,000/-	---	Cancelled
6.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total Compensation	17,37,000/-	26,47,000/-	Enhanced

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,37,000/- is hereby enhanced to **Rs.26,47,000/- [Rupees Twenty Six Lakh Forty Seven Thousands only]** along with interest at the rate of 7.5% per 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 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.3532 of 2017 on the file of the Special Sub Court No.1, Motor Accidents Claims



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Tribunal, II Court of Small Causes, Chennai. On such deposit, the 1st appellant/ 1st claimant is 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 1st claimant. As far as the minor claimants/ appellants 2 to 4 are concerned, their compensation amount to be deposited in any one of the Nationalized Bank in their respective name till they attain majority and the 1st appellant, who is the father and natural guardian of the minors claimants/ appellants 2 to 4 is entitled to receive the interest once in 6 months exclusively for the welfare of the minors. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. 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



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K. RAJASEKAR, J.

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To:

1. The Full Additional In-charge of II Court of Small Causes.,
Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

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