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C.M.A.No.3832 of 2019

Civil Miscellaneous Appeal No.3832 of 2019

M.DHANDAPANI,J.

This matter has been listed today under the caption 'for being mentioned' at the instance of the learned counsel appearing for the second respondent/Insurance Company.

2. It is brought to the notice of this Court by the learned counsel for the second respondent/Insurance Company that the deceased was aged about 54 years and the future prospects should be given at 10% as per the decision of the Apex Court in *Pranay sethi* case. However, inadvertently, the future prospects was fixed at 40%. Therefore, the learned counsel prays to make necessary corrections and to issue fresh order copy.

3. This Court went through the order and finds that an error in fixation of future prospects has crept in, in paragraph 11 of the order which has resulted in erroneous fixation of compensation. In view of the above submission made by the learned counsel for the second respondent/Insurance Company, this Court is inclined to modify



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paragraph Nos.11 to 15 in order dated 04.11.2024 as follows:

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11. In the instant case, the deceased was aged about 54 years at the time of the accident and he was a plumber earning a sum of Rs.25,000/- per month. The Tribunal has fixed the notional monthly income at Rs.10,000/- + 10% for the future prospects to the tune of Rs.1,32,000/-(Rs.1,20,000/-+10%thereof) and deducted 1/3 for dependency. The accident had taken place on 15.07.2016 and the notional monthly income fixed by the Tribunal is very much on the lower side. Considering the age of the deceased, the age of the claimants and also the year in which the accident had taken place, this Court is inclined to fix the notional monthly income at Rs.11,000/-. The age of the deceased was 54 years and therefore, 10% is added towards future prospects. If so, the loss of income /dependency would be:

Monthly Income	:	Rs. 11,000/-
Add: Future Prospects	:	Rs. 1,100/-
10% of Rs.11,000/-	:	-----
		Rs. 12,100/-
Annual Income	:	Rs. 1,45,200/-
(12,100 * 12)		
Less : Personal expenses		
Rs.1,45,200/- *1/3	:	Rs. 48,400/-

		Rs. 96,800/-
Multiplier	:	x 11



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Loss of income/dependency : Rs.10,64,800/-

12. The Tribunal has fixed a sum of Rs.40,000/- under the head of loss of consortium, which is in order and this Court is inclined to grant a sum of Rs.40,000/- under the head of “loss of love and affection”.

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

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of dependency	9,68,000	10,64,800/-
Loss of estate	15,000	15,000
Loss of consortium	40,000	40,000
Loss of Funeral expenses	15,000	15,000
Loss of Love and affection		40,000
Total	10,38,000/-	11,74,800/-

14. The compensation awarded by the Tribunal at Rs.10,38,000/- is enhanced to Rs.11,74,800/-. The second respondent Insurance company is directed to deposit the entire 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 four weeks from



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the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The first and second appellants are entitled to get the award amount equally with proportionate interest. In respect of the minor share, the Tribunal shall deposit the said amount in a Fixed Deposit in any of the nationalized bank for a period of one year and renewable thereafter. Upon attaining majority, the first appellant and the second appellant are directed to withdraw the award amount. Till the second appellant attains majority, the first appellant is permitted to withdraw the interest amount periodically.

15. In the result, the Civil Miscellaneous Appeal is allowed. No costs."

4. Except the above modification, remaining portion of the order dated 04.11.2024 shall stand unaltered.

5. Registry is directed to carry out the necessary correction as aforesaid in the order dated 04.11.2024 and issue fresh copy of the order to the learned counsel for the parties.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.3832 of 2019

1.R.Devi

2.Minor R.Bavadharani

... Appellants

Vs.

1.R.Richard Dsilva

2.The New India Assurance Co.Ltd.,
Motor Third Party Claims Office,
No.232, Bombay Mutual Building,
6th Floor, N.S.C.Bose Road,
Chennai-1.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the appeal and enhance the compensation in MCOP. No.5125/2016 dated 21.12.2018 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.II), Court of Small Causes, Chennai.

For Appellant : Mr. R. Nalliyappan

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For Respondents : Notice returned for R1
Mr.G.Anandan for R2

JUDGMENT

The first appellant is the wife and the 2nd appellant is the daughter of the deceased. The claimants not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal.

2. The case of the claimants is that the deceased P.Ramachandran, aged about 51 years at the time of accident. On 15.07.2016, at about 12.30 hours, when he was riding the motorcycle bearing Reg.No.TN 07 BP 0619 towards Kamaraj Nagar South Avenue, in front of door No.6/29 from South to North direction, the motorcycle bearing Reg. No.TN 07 BX 8815 came from the opposite direction in a rash and negligent manner, dashed against the motor cycle, as a result, the deceased sustained grievous injuries and succumbed to injuries at the hospital on 15.07.2016. The first respondent is the owner of the



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motorcycle and the second respondent is its insurer. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation for a sum of Rs.46,00,000/-

3. 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 on the part of the driver of the motorcycle and awarded a sum of Rs.10,38,000/- towards compensation for the death of the deceased P.Ramachandran under various heads.

4. The claimants not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation.

5. The learned counsel for the appellants submitted that the age of the claimant is 51 years at the time of the accident and he was a plumber and he was earning a sum of Rs.25,000/- per month. Without considering



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the same, the Tribunal has fixed the notional income at Rs.10,000/- which is very meagre. Further, the Tribunal has awarded only Rs.70,000/- towards loss of consortium, loss of estate and funeral expenses, which are also too low. Therefore, this Court may interfere with the impugned award and modify the same.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that due to rash and negligent driving of the motorcycle by the deceased, the accident had happened. The compensation awarded by the Tribunal in favour of the appellant is just and reasonable. Hence, this Court may dismiss the petition.

7. Heard the learned counsel for appellant/claimant and the learned counsel for 2nd respondent.

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



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

10. The fact in the present case is not in dispute and the manner of the accident is also not in dispute. For enhancement of compensation, the present appeal has been filed.

11. In the instant case, the deceased was aged about 54 years at the time of the accident and he was a plumber earning a sum of Rs.25,000/- per month. The Tribunal has fixed the notional monthly income at Rs.10,000/- + 10% for the future prospects to the tune of Rs.1,32,000/- (Rs.1,20,000/-+10%thereof) and deducted 1/3 for dependency. The accident had taken place on 15.07.2016 and the notional monthly income fixed by the Tribunal is very much on the lower side. Considering the age of the deceased, the age of the claimants and also the year in which the accident had taken place, this Court is inclined to fix the notional monthly income at Rs.11,000/-. The age of the deceased was 54 years and therefore, 40% is added towards future prospects. If so, the loss of

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income /dependency would be:

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Monthly Income : Rs. 11,000/-

Add: Future Prospects : Rs. 4,400/-

40% of Rs.11,000/-

Rs. 15,400/-

Annual Income : Rs. 1,84,800/-

(15,400 * 12)

Less : Personal expenses

Rs.1,84,800/- *1/3 : Rs. 61,600/-

Rs. 1,23,200/-

Multiplier : x 11

Loss of income/dependency : Rs.13,55,200/-

12. The Tribunal has fixed a sum of Rs.40,000/- under the head of loss of consortium, which is in order and this Court is inclined to grant a sum of Rs.40,000/- under the head of “loss of love and affection”.

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



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of dependency	9,68,000	13,55,200/-
Loss of estate	15,000	15,000
Loss of consortium	40,000	40,000
Loss of Funeral expenses	15,000	15,000
Loss of Love and affection		40,000
Total	10,38,000/-	14,50,200/-

14.The compensation awarded by the Tribunal at Rs.10,38,000/- is enhanced to Rs. 14,50,200/-. The second respondent Insurance company is directed to deposit the entire 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 four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The first and second appellants are entitled to get the award amount equally with proportionate interest. In respect of the minor



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share, the Tribunal shall deposit the said amount in a Fixed Deposit in any of the nationalized bank for a period of one year and renewable thereafter. Upon attaining majority, the first appellant and the second appellant are directed to withdraw the award amount. Till the second appellant attains majority, the first appellant is permitted to withdraw the interest amount periodically.

15. In the result, the Civil Miscellaneous Appeal is allowed.

No costs.

04.11.2024

msv

To,
Motor Accidents Claims Tribunal
(Special Sub Court No.II),
Court of Small Causes,
Chennai.



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M.DHANDAPANI.,J
msv

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