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C.M.A.No.3164 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K. RAJASEKAR

C.M.A.No.3164 of 2021

1. Prabhakaran
2. Revathi ... Appellants

Vs

1. Senthil Kumar
2. The New India Assurance Company Limited
MACT Claim Office,
having its office at
No.45, Moor Street,
5th floor, Chennai ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the decree and judgment dated 28.06.2021 made in MACTOP.No.501 of 2016 on the file of the Motor Accident Claims Tribunal, IV Additional District and Sessions Judge, Ponneri.

For Appellant : Mr.K.M.Ramesh

For Respondents : NDW- R1
M/s.J.Chandran for R2



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JUDGMENT

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This Appeal has been filed by the claimant seeking enhancement of compensation under the Impugned Order dated 28.06.2021 passed by the Motor Accident Claims Tribunal, IV Additional District and Sessions Court, Ponneri in M.C.OP.No.501 of 2016.

2. On 12.04.2016 at about 11:45 a.m. while the deceased namely Ajith Kumar was riding a two wheeler bearing Registration No.TN-18-B-9297 at Thiruvallur High Road, Opposite to Bharkava Kula Udayar Thirumana Maligai, Redhills, Chennai, at that time the TATA Ace Van bearing Registration No. TN-02-AF-5674 driven by its driver in a rash and negligent manner and dashed against the said Ajithkumar caused head injury and he died on the spot. The motor cycle bearing Registration No.TN-18-B-9297 belonged to the first respondent and insured with the second respondent. The Appellants are the parents and the dependents of the deceased. They preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.501 of 2016 seeking compensation for the death of



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their son Ajithkumar for Rs.25,00,000/- under Section 166 of M.V.Act.

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3. The Tribunal under the Impugned Order directed the second respondent to pay the Appellants a compensation of Rs.12,79,600/- together with interest and costs as detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of dependency:- Rs.5,600x12x18 = Rs.12,09,600/-	Rs.12,09,600/-
Loss of love and affection	Rs.40,000/-
Loss of estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-
Total	Rs.12,79,600/-

4. The Appellants/claimants unsatisfied with the quantum of compensation awarded by the Tribunal have preferred this Appeal seeking for enhancement. The respondents have not challenged the award of the Tribunal.

5. Heard Mr.K.M.Ramesh, learned counsel for the Appellants and



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Mr.J.Chandran, learned counsel for the second respondent.

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6. Before the Tribunal, the Appellants/claimants have filed eleven documents which were marked as Ex.P1 to Ex.P11 and two witnesses were examined namely the father/1st appellant was examined as PW1 and one eye witness of the accident was examined as PW2. On the side of the second respondent/Insurance Company neither any document was filed nor any witnesses were examined, before the Tribunal.

7. The deceased Ajithkumar was aged 18 years and was studying in XIIth standard. The Tribunal has fixed the notional monthly income of the deceased at Rs.8,000/- per month. The year of the accident is 2016. The Tribunal ought to have given due consideration to the year of the accident before fixing the income of the deceased. The deceased seems to be a only son of their parents and intelligent in studying. After giving due consideration to the aforementioned factors, this Court is of the view that the notional monthly income of the deceased to be fixed as Rs.12,000/- instead of Rs.8,000/- per month fixed by the Tribunal. The Tribunal has



rightly deducted 50% of the deceased income for his personal and living expenditure and added 40% towards future prospects.

8. For the foregoing reasons, the loss of income is assessed by this Court at Rs.18,14,400/- ($12,000 + 40\% = 4,800 - 50\% = 8,400 \times 12 \times 18$) instead of Rs.12,09,600/- fixed by the Tribunal.

9. The Tribunal has awarded a compensation of Rs.40,000/- towards loss of love and affection which in the considered view of this Court is on the lower side and not in accordance with judgment of Apex Court in ***United India Insurance Co.Ltd., Vs Satinder Kaur and others*** reported in 2021 (11) SCC 780 and the same is set aside. In accordance with the said judgment, this Court awards Rs.40,000/- each towards loss of consortium to the parents of the deceased.

10. The Tribunal has rightly awarded compensation of Rs.15,000/- towards funeral expenses and Rs.15,000/- towards Loss of estate to the Appellants/claimants in accordance with settled practice as per Apex Court



judgment in *National Insurance Company Limited Vs Pranay Sethi and others* reported in 2017 (2) TNMAC 609.

11. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.12,79,600/- to Rs.19,24,400/- by this Court in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>	<i>Award confirmed or enhanced or granted</i>
Pecuniary loss	12,09,600/- (5,600 x 12x18)	18,14,400/- (12,000 + 40% = 4,800 – 50% = 8,400 x 12 x 18)	Enhanced
Loss of Consortium	---	80,000/- (40,000/- each)	Granted
Loss of Love and Affection	40,000/-	-	set aside
Funeral Expenses	15,000/-	15,000/-	Confirmed
Loss of estate	15,000/-	15,000/-	Confirmed
Total	12,79,600/-	19,24,400/-	



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Conclusion:

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12. In the result, this Appeal is partly allowed. The rate of interest fixed by the Tribunal at 7.5% per annum is confirmed. The second respondent Insurance Company is directed to deposit the modified award amount along with interest from the date of claim till the date of deposit and cost, after deducting the amount already deposited if any to the credit of MCOP.No.501 of 2016 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount lying to the credit of MCOP.No.501 of 2016 to the bank account of the Appellants through RTGS as per the ratio apportioned by the Tribunal within a period of two weeks thereafter. No costs.

01.02.2024

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order
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K. RAJASEKAR, J.

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To
The Section Officer,
VR Section, High Court,
Chennai.

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