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C.M.A.No.2400 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.2400 of 2023

P.Krishnakumar

... Appellant/Petitioner

Vs.

1. N.P.Perumal
2. The Oriental Insurance Company Ltd.,
No.59, Raja Street, Gobi Town and Taluk,
Erode District.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the award in Judgement and Decree dated 26.09.2022 made in M.C.O.P.No.08 of 2020 on the file of the Motor Accident Claims Tribunal and III Additional District and Sessions Judge, Gobichettipalayam.

For Appellant : Mr.S.P.Yuaraj
For R1 : No appearance
For R2 : Mr.J.Chandran



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JUDGEMENT

This Civil Miscellaneous Appeal has been filed, challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge in M.C.O.P.No.08 of 2020 dated 26.09.2022, the claimant is before this Court.

2. The brief facts are as follows:-

The appellant/petitioner is the husband of deceased Prabavathi. On 16.08.2017 at about 13.30 hours, the petitioner/appellant's wife was riding a TVS XL Super two wheeler bearing Reg.No.TN-36-H-6738 proceeding from Gobi to Tiruppur, at that time, a Bus bearing Registration No.TN-36-Q-0369, belonging to the first respondent and insured with 2nd respondent/Insurance Company, driven by its driver in a rash and negligent manner, dashed against the deceased, as a result of which, the appellant's wife sustained grievous injuries all over her body. Though she was rushed to the hospital and taken treatment, later, she died on 17.11.2017. Thereafter, the appellant has filed a claim petition before the Tribunal, claiming a compensation of Rs.15,00,000/-.



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3. The learned counsel for the appellant submitted that at the time of accident, the deceased was married and owned a Maligai shop, was earning Rs.10,000/- per month by way of business. However, the Tribunal fixed the monthly income notionally at a sum of Rs.5,000/-, which is on lower side and hence, the same is required to be enhanced. Further, the Tribunal has not awarded any amount under the head of “loss of consortium” and the same may be awarded. Accordingly, he prays for appropriate enhancement of the compensation in favour of the appellant.

4. Per contra, the learned counsel appearing for the respondent/Insurance Company would fairly submit that appropriate compensation may be awarded by fixing fair notional income of the deceased.

5. Heard the learned counsel for the appellant and the learned counsel appearing for the second respondent and perused the materials available on record.



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6. The fact and manner of the accident is not disputed by the parties. Therefore, this Court is not dealing with the said aspect. The only grievance of the appellant is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the appellant that though the deceased was aged 33 years at the time of accident and earning a sum of Rs.10,000/- per month and her husband was alive, but without considering the same, the Tribunal had erroneously fixed the notional income at Rs.5,000/- per month. Therefore, this Court is of the view that the notional monthly income of the deceased fixed by the Tribunal is very meagre and it is required to be modified. Applying the ratio laid down by the Hon'ble Apex Court, this Court feels it appropriate to fix notional monthly income at Rs.12,000/- per month and adding future prospects at 40%, the total income per month is quantified at Rs.16,800/- per month. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.11,200/- per month and the deceased was aged about 33 years at the time of accident as evidenced from the records, adopting the multiplier of 15 as fixed by the Apex Court, the loss of income to the family is arrived at Rs.11,200/-



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x12x15 = Rs.20,16,000/-, which is worked out as follows :-

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<i>Loss of Income</i>	<i>Amount in Rs.</i>
Notional income (Per month)	12,000
Add: Future Prospects (Rs.12,000 x 40%) (Per month)	4,800
	16,800
Less: Personal expenses (1/3rd) (Rs.16,800/- x 1/3) (Per month)	5,600
	11,200
Notional income (per annum) (Rs.11,200/- x 12)	1,34,400
Multiplier	15
Total	20,16,000

7. Apart from "loss of income", the amount awarded by the Tribunal under all other heads, stand confirmed. Further, no amount has been granted under the head of "loss of consortium". Therefore, this Court is inclined to award a sum of Rs.40,000/- towards "loss of consortium" to the appellant. Accordingly, the compensation awarded by the Tribunal is modified as under :-



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<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of Income	8,40,060/-	20,16,000/- (enhanced)
Loss of constorium	Nil	40,000/- (granted)
Funeral expenses	15,000/-	15,000/-
Loss of estate	15,000/-	15,000/-
Total	8,70,060/-	20,86,000/-

8. Accordingly, the Appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.8,70,060/-** to **Rs.20,86,000/-**. The second respondent/Insurance Company is directed to deposit the said amount 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.08 of 2020 on the file of III Additional District and Sessions Judge. Upon such deposit being made, the Tribunal is directed to transfer



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the entire amount to the respective bank account of the claimant, the petitioner/claimant is entitled to receive the entire compensation amount, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimant or application for withdrawal from the claimant, whichever is later. It is made clear that the claimant will not be entitled for any interest for the delay period of 207 days. The appellant/claimant is directed to pay the necessary Court fee for the enhanced compensation amount. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the claimant. No costs.

19.01.2024

Index : Yes / No
NCC : Yes / No
jd

To

1. The Motor Accident Claims Tribunal,
III Additional District and Sessions Judge,
Gobichettipalayam.
2. The Section Officer,



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V.R. Section,
High Court, Madras.

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Krishnan Ramasamy,J.,

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