IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2439 of 2023

1. K.Mallikai
2. R.Kanaga Subburathinam .. Appellants

Vs.

1. S.Bharathi
(1st Respondent remained exparte)

2. Future General Insurance Co. Ltd.,
1st, 2nd & 3rd Floor,
Plot No.55 (Old Plot No.27),
Vijay Raghava Road, T.Nagar,
Chennai-600 017. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.10.2022 made in M.A.C.T.O.P.No.3610 of 2017, on the file of the III Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.M.Mahendran

for Mr.R.Kalai Arasan

For Respondents : Notice dispensed with (R1)
Ms.C.Harini
for M/s.M.B.Gopalan Associates (R2)

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JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 17.10.2022 made in M.A.C.T.O.P.No.3610 of 2017 on the file of the III Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2. The appellants are the claimants in M.A.C.T.O.P.No.3610 of 2017 on the file of *Motor Accidents Claims Tribunal (III Small Causes Court), Chennai.* They filed the above said claim petition, claiming a sum of **Rs.45,00,000/-** as compensation for the death of K.Arul Mozhi Vijayan, who died in an accident that took place on 09.05.2017.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent act of the driver of the Tanker lorry, belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of **Rs.14,33,000/-** as compensation to the appellants.

4.Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel for the appellants contended that at the time of accident, the deceased K.Arun Mozhi Vijayan was aged 40 years and was doing online trading business and earning a sum of Rs.40,000/- per month, but the Tribunal has fixed only a sum of Rs.10,500/- as monthly income of the deceased, while determining the compensation towards Loss of Dependency, which is very low and requested this Court to fix a sum of Rs.15,000/- as notional income of the deceased. He further submitted that the compensation awarded by the Tribunal under other heads is also very low and the same needs to be enhanced.

6.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that since the appellants have not filed any documentary evidence in order to prove that the deceased was earning a sum of Rs.40,000/- per month, the Tribunal, by taking note of prevailing working atmosphere in the society, has fixed a sum of Rs.10,500/- as monthly income of the deceased which is reasonable. He further submitted that the total compensation awarded by the Tribunal under various heads is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

8. It is the case of the appellants that at the time of accident the deceased was aged 40 years and was doing online business and was earning a sum of Rs.40,000/- per month, but the Tribunal has fixed notional income of the deceased only at Rs.10,500/- which in the opinion of this Court, is very low. The accident took place in the year 2017. The cost of living has been increased enormously and salary of even unskilled workers being increased substantially. Hence, a sum of Rs.14,500/- per month is fixed as notional income of the deceased and by adding future prospects @ 40% the monthly income of the deceased comes to Rs.20,300/-(14500+5800) and the annual income comes to Rs.2,43,600/- (20,300x12). By deducting 50% towards

personal expenses and by adopting multiplier 15 as per the decision of Hon'ble Supreme Court in the case of ***SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER*** reported in ***(2009) 4 MLJ 997,*** the compensation awarded by the Tribunal towards Loss of dependency is modified to ***Rs.18,27,000/-*** (2,43,600-121800x15)

9. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced, reduced or granted
1.	Loss of dependency	13,23,000/-	18,27,000/-	Enhanced
2.	Loss of Consortium	80,000/-	80,000/-	Confirmed
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total	**Rs.14,33,000/-**	**Rs.19,37,000/-**	**Enhanced by Rs.5,04,000 /-**

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,33,000/- is hereby enhanced to Rs.19,37,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The Claimants are entitled to the compensation as apportionment made by the Tribunal. The 2nd respondent-Insurance Company is directed to deposit the award amount now determined 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.3610 of 2017** on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai. On such deposit being made, the Tribunal is directed to transfer the Award amount, as apportioned by the Tribunal, directly to the Bank account of the Appellants/Claimants through RTGS, within a period of **three weeks.** The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving interest for the period of delay in question, the interest portion for that period should be excluded for the purpose of granting interest. No costs.

19.01.2024

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Index : Yes / No
Internet : Yes / No

To

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   1st, 2nd & 3rd Floor,
   Plot No.55 (Old Plot No.27),
   Vijay Raghava Road, T.Nagar,
   Chennai-600 017.

2. The Motor Accident Claims Tribunal,
   (III Court of Small Causes), Chennai

3.The Section Officer,
   VR Section,
   High Court,
   Madras.

KRISHNAN RAMASAMY, J.

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C.M.A.No.2439 of 2023

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