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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.601 of 2022

1.S.Manimekalai

2.P.Sankaran

..Appellants

.VS.

1.S.Kailash

2.National Insurance Company Limited
Divisional Office-I, LRN Colony,
Saratha College Road,
Salem-7.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking enhancement of compensation in the judgment and decree dated 17.03.2020 made in MCOP No.470 of 2014 on the file of MACT / Additional District Court (FAC) at Namakkal.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : Ms.R.Sreevidhya for R2



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JUDGMENT

The claimants who are the parents of the deceased Kausalya have filed this appeal against the Award passed by the Motor Accident Claim Tribunal, Namakkal in MCOP No.470 of 2014, dated 17.03.2020, seeking for enhancement of compensation.

2.The deceased Kausalya was an engineering graduate who had completed Electronic and Communication Engineering from Anna University. She was a very meritorious student who also secured a job in Cognizant Technologies Private Limited as Program Analyst. She joined in this Company on 01.07.2013. She was confirmed and her salary was also revised, which is evident from Ex.P10 to Ex.P.14. The deceased was travelling in the car belonging to the 1st respondent on 10.01.2014 and the car was driven in a rash and negligent manner and at about 8.30 p.m., when the car was approaching Adhiyur Post at Erode, the car capsized resulting in the deceased sustaining grievous injuries. Unfortunately, the deceased succumbed to the injuries. An FIR came to be registered in Crime No.11 of 2014 against the driver of the car. It is under these circumstances, the parents filed the claim petition seeking for enhancement of compensation.



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3.The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a categorical conclusion that the accident had taken place only due to the rash and negligent driving of the car belonging to the 1st respondent. After having rendered such a finding, the Tribunal proceeded to fix the compensation and the total compensation was fixed at Rs.15,57,120/- in the following manner:

S.No	Compensation awarded under the head	Amount (in Rs.)
1	Loss of Income (Rs.7070/- x 12 x18)	15,27,120
2	Loss of Estate	15,000
3	Funeral Expenses	15,000
	Total	15,57,120

4.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

5.The claimants not being satisfied with the quantum of compensation fixed by the Tribunal have filed the present appeal seeking for enhancement of compensation.

6.Heard Mr.Ma.P.Thangavel, learned counsel appearing on behalf of the



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appellants and Ms.R.Sreevidhya, learned counsel appearing on behalf of the 2nd respondent.

7.This Court has carefully considered the submissions made on either side and the materials available on record and also carefully gone through the Award passed by the Tribunal.

8.The bone of contention pertains to the income that was fixed by the Tribunal at Rs.10,100/- per month. The Salary Certificate which was marked as Ex.P10 series shows that the deceased had joined Cognizant Technologies Private Limited on 01.07.2013. Thereafter, during January 2014, considering her performance, her salary was revised to Rs.3,65,624/- per year. The Salary Certificate for the months of November 2013 to January 2014 which were marked as Ex.P11 to Ex.P13 shows that the gross salary earned by the deceased was Rs.27,590/- The Form-16 that was marked as Ex.P15 shows that no amount is payable towards income tax by the deceased.

9.It is now too well settled that where there is a sterling material available before the Court to determine the income of the deceased which is based on the salary that was received by her, the gross salary has to be taken



into consideration and the only deduction that is permissible is the deduction

that is made towards income tax. In the instant case, it is quite clear from the materials placed before this Court that the gross salary of the deceased was Rs.27,590/-. No income tax has been deducted from this salary and therefore, this amount must be taken to be the monthly salary of the deceased. However, the Tribunal has taken a sum of Rs.10,100/- as monthly salary which requires the interference of this Court.

10.The Tribunal has also added only 40% towards future prospects. However, as per the judgment of the Apex Court in *National Insurance Co., Ltd., vs. Pranay Sethi and Others* reported in **2017 2 TN MAC 609**, where the deceased is having a permanent job and is paid a regular salary, the future prospects must be fixed at 50% and not 40% as was done by the Tribunal. This also requires the interference of this Court.

11.In the light of the above discussion, the total compensation to be fixed under the head of 'Loss of income' is Rs.44,69,580/- (Rs.27,590/- + 50% x 12 x 18 x ½) .

12.The Tribunal has not granted any compensation under the head of



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'Love and Affection'. The claimants in this case are the parents. Therefore, this Court is inclined to fix a sum of Rs.40,000/- to each of the claimant under this head and the total compensation is fixed at Rs.80,000/-

13.The compensation that has been fixed under the other heads are reasonable and does not require the interference of this Court.

14.In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income (Rs.27,590/- + 50% x 12 x 18 x ½)	44,69,580
2.	Loss of Love and Affection	80,000
3.	Loss of Estate	15,000
4.	Funeral Expenses	15,000
	Total	45,79,580

15.The compensation awarded by the tribunal at Rs.15,57,120/- is enhanced to Rs.45,79,580/-. The second respondent insurance company is directed to deposit the enhanced 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. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

16. In the result, the Civil Miscellaneous Appeal stands allowed in the above terms. No costs.

24.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Motor Accident Claim Tribunal / Additional District Court (FAC) at
Namakkal.



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N. ANAND VENKATESH., J

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