IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.2109 of 2023

1.S.Rajendiran

2.Deepa

3.Minor. Meera

4.Minor. Vinith .. Appellants

(Minor appellants 3 & 4 represented by their next friend Father S.Rajendiran, 1st appellant herein)

Vs.

1.A.Ameer John

(R1 remained exparte before the Tribunal. Hence, notice to R1 is dispensed with)

2.The Divisional Manager,
Third Party Claim's Hub,
United India Insurance Company Limited,
No.1, Katpadi Road, Vellore. .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to enhance the award against the judgment and decree dated 28.02.2023 made in M.C.O.P.No.247 of 2019 on the file of the III Additional Sessions Judge, Vellore @ Tirupattur.

For Appellants	:	Ms.N.Lavanya for Ms.M.Malar
For R2	:	Ms.R.Sree Vidhya

JUDGMENT

The claimants who are the parents, brother and sister of the deceased Viswa, not being satisfied with the quantum of compensation, have filed the present appeal against the award passed by the III Additional Sessions Judge, Vellore @ Tirupattur, in M.C.O.P.No.247 of 2019 dated 28.02.2023.

2.The case of the claimants is that on 02.12.2018, the deceased was walking on the left side of the road near Samathuvapuram and at about 10.30 AM, the offending vehicle which was a Tata Indica car was driven in a rash and negligent manner and it dashed on the deceased as a result of which, the deceased sustained grievous injuries and was admitted in a hospital and unfortunately, the young boy succumbed to the injuries. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of the 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 offending vehicle. The Tribunal having rendered such a finding, proceeded to fix the total compensation at Rs.4,30,000/- and directed the same to be paid with interest at the rate of 7.5% per annum.

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

5.Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent.

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

7.This Court has also carefully gone through the award passed by the Tribunal.

8.The main ground that was urged by the learned counsel for the appellants is with regard to the income that was fixed by the Tribunal while calculating the compensation under the head of loss of income. The Tribunal had fixed the annual income at Rs.25,000/-, since the deceased in this case was aged about 7 years. Accordingly, the compensation under the head of loss of income / expectancy was determined at Rs.3,75,000/-.

9.This Court had an occasion to deal with the same issue on fixing annual income for a child in C.M.A.No.1814 of 2022 and it was held as follows:

> *"9.The main issue that was urged by learned counsel for appellant insurance company is that the Tribunal has fixed the notional income of the deceased child at Rs.60,000/- p.a. which is on the higher side. Learned counsel, by relying upon various judgments, submitted that the notional income for the minor child cannot exceed Rs.30,000/- p.a. Insofar as the multiplier that was adopted, learned counsel fairly submitted that the Tribunal ought to have adopted multiplier '15' instead of '13'. Insofar as the other heads under which the compensation was fixed, no serious objections were raised.*
>
> *10.While fixing compensation for a child, it is important for the Court to take note*

of the age of the parents. If the age of the parents is low and they are capable of having another child, that becomes a criteria for fixing the notional income. In such cases, the notional income can be at a lower side. The notional income can be fixed in those cases at Rs.30,000/- as suggested by the Apex Court in ***Meena Devi v. Nunu Chand Mahto alias Nemchand Mahto and others [(2023) 1 SCC 204].***

11.This Court has consistently taken a view that insofar as minor children are concerned, the notional income can be fixed between Rs.30,000/- and Rs.60,000/-. Useful reference can be made to the judgment passed in C.M.A.No.2326 of 2023, dated 29.09.2023."

10.This Court had an occasion to follow the above order in C.M.A.No.1114 of 2024 by an judgment dated 11.06.2024 and the relevant portions are extracted hereunder:

"12.It is clear from the above that this Court has consistently taken a view that insofar as minor children are concerned, the notional annual income can be fixed in the range of Rs.30,000/- to Rs.60,000/-. Due consideration must also be given to the age of the parents and it must be seen if they are likely to have another child.

13.In the case in hand, the father was

> *aged about 35 years and the mother was aged about 25 years and therefore, there is a clear likelihood of having an another child. That apart, there is also no indication in the order that the deceased child was the only child of the claimants.”*

11.In the instant case, the appellants 1 & 2 who are the parents are aged about 45 years and 35 years respectively. However, they have two more children – a girl aged about 12 years and a boy aged about 11 years. Therefore, the same must also be taken into consideration while fixing the notional annual income.

12.In the case in hand, this Court is inclined to fix the notional annual income at Rs.45,000/-. Accordingly, the compensation under the head of loss of dependency is calculated as follows:

Rs.45,000/- X 15 = Rs.6,75,000/-

13.The Tribunal has not specifically dealt with the compensation under the head of loss of love and affection. However, it has granted a consolidated compensation of Rs.4,30,000/-. In the considered view of this Court, each of the dependent is entitled for Rs.40,000/- towards loss of love and affection. Accordingly, this Court fixes a sum of

Rs.1,60,000/- under this head (Rs.40,000/- X 4).

14.This Court is also inclined to fix a sum of Rs.15,000/- under the head of funeral expenses and another sum of Rs.15,000/- under the head of loss of estate.

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

1.Loss of Income	-	Rs.6,75,000/-
2.Loss of Consortium	-	Rs.1,60,000/-
3. Funeral Expenses	-	Rs.15,000/-
4.Loss of Estate	-	Rs.15,000/-
Total		Rs.8,65,000/-

16.The compensation awarded by the Tribunal at Rs.4,30,000/- is hereby enhanced to Rs.8,65,000/-. The 2nd respondent is directed to deposit the enhanced compensation 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, if not already deposited. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

17.In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

05.07.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The III Additional Sessions Judge,
III Additional Sessions Court,
Vellore @ Tirupattur.

2.The Section Officer,
VR Section,
Madras High Court,
Chennai.

N.ANAND VENKATESH, J.

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