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C.MA.No.2244 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

CMA.No.2244 of 2022

1.P.Subha

2.H.Keerthana

3.Malliga

4.Annadurai

... Appellants

Vs.

1.Velautham

2.The Manager,
HDFC ERGO General Insurance Company Ltd.,
No.94/95, R.R.Towers, 2nd Floor,
Industrial Guindy, Chennai - 23.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, pleaded to enhance the award against the Judgment and Decree dated 13.07.2021 and made in M.A.C.T.O.P.No.211 of 2019 on the file of the Special District Court to deal with MCOP Cases No.1, Thiruvallur.

For Appellants : Ms.A.Subadra

For R1 : Exparte



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For R2

: M/s.K.Poomalar

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JUDGMENT

This Civil Miscellaneous Appeal is filed to enhance the compensation awarded, in M.A.C.T.O.P.No.211 of 2019 dated 13.07.2021 on the file of the Special District Court to deal with MCOP Cases No.1, Thiruvallur.

2.The claimants 1 to 4, who are the wife, daughter, mother and father of the deceased Haridoss have filed the claim petition seeking compensation for a sum of Rs.40,00,000/- under Motor Vehicle Act, 1988, for the death of Haridoss, who died in a road accident which occurred on 01.10.2019 at about 09.30 a.m. at Pallikaranai Velachery Main Road near Kamatchi Hospital. According to the claimants, the deceased was aged about 30 years at the time of the accident and he was a skilled employee in the construction field and was earning Rs.20,000/- per month. The claimants claimed that the driver of the first respondent had negligently driven the lorry and caused the accident, due to which the deceased sustained fatal injuries and died.

3.The first respondent owner of the offending vehicle remained exparte. The claim petition was contested by the second respondent Insurance Company which filed a detailed counter denying all the allegations made in the claim



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petition. The second respondent further submitted that the deceased negligently driven the vehicle and the first respondent's driver was not responsible for the accident and further the second respondent disputed the age, income and the occupation of the deceased.

4.Before the claims Tribunal, wife of the deceased was examined as PW1 and the eye-witness was examined as PW2 and Ex.P1 to Ex.P16 were marked in support of their claim. On the side of the respondents no oral evidence adduced and Ex.R1 marked.

5.The claims Tribunal, on assessment of the entire evidence on record, awarded a sum of Rs.20,07,800/- as compensation along with 7.5% interest per annum from the date of presentation of the petition till the date of realization with costs. Aggrieved over the quantum of compensation, the claimants come forward with this appeal.

6.The learned counsel for the appellants submitted that initially the income fixed by the Tribunal under the Head loss of earning of the deceased was very meager and the same needs to be enhanced. The learned counsel for



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the appellants further submitted that the Claims Tribunal ought to have award more compensation under the Head of loss of dependency, loss of estate, loss of consortium, funeral expenses and transport to hospital and only 40% of the deceased income was fixed as the future prospects of the deceased. The Claims Tribunal ought to have award compensation under the Head of mental agony, damage, loss of expectation of life, love and affection. The Claims Tribunal failed to apply the proper multiplier as per the schedule. The learned counsel for the appellants relied on some Judgments of this Court in support of their claim.

7.The learned counsel for the second respondent submitted that the Tribunal after taking note of the fact that the claimants failed to prove the income of the deceased and the Tribunal notionally fixed the income. The learned counsel for the second respondent also submitted that the award of the Tribunal was just, fair and reasonable and did not call for any interference in this appeal.

8.Heard both sides and perused the materials placed on record.



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9. It is the case of the claimants that the deceased was working as a daily wager in the Construction field. However, the claimants were not able to prove the occupation and monthly income of the deceased. It is seen that the deceased was aged about 30 years at the time of the accident and therefore considering the cost index of the year 2019, I am of the view that the monthly income of the deceased can be assessed at Rs.15,000/- per month, 40% of the income is added towards future prospects i.e. Rs.6,000/-. Therefore, the total monthly income is arrived at Rs.21,000/- and after adopting multiplier "17" and deducting 1/4th towards contribution to the family, the loss of income is arrived at Rs.32,13,000/- ($\text{Rs.21,000} \times 12 \times 17 = \text{Rs.42,84,000/-}$ and deducted 1/4th i.e. Rs.10,71,000/-). The Tribunal has awarded only Rs.40,000/- under the head of loss of consortium. The Hon'ble Supreme Court in the case of ***United India Insurance Co. Ltd., Vs. Satinder Kaur @ Satwinder Kaur and others reported in 2020 SCC Online SC 410***, held that both the spousal and parental consortium are to be payable. Hence, all the claimants are entitled for a sum of Rs.40,000/- each under the Head of Consortium. As per the compensation awarded under the Head of Loss of Estate, funeral expenses are confirmed and the compensation awarded under the Heads Transport to hospital expenses



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needs to be cancelled.

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10. In the light of the said discussion, the award of the Claims Tribunal is modified as follows:

S.No.	Various Heads	Award by the Tribunal (Amount in Rs.)	Award by this Court (Amount in Rs.)
1	Loss of earning of the deceased	Rs.19,27,800/-	Rs.32,13,000/-
2	Loss of Estate	Rs.15,000/-	Rs.15,000/-
3	Loss of Consortium	Rs.40,000/-	Rs.1,60,000/-
4	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
5	Transport to hospital expenses	Rs.10,000/-	NIL
Grand Total		Rs.20,07,800/-	Rs.34,03,000/-

11. The second respondent is directed to deposit the entire compensation amount along with 7.5% interest from the date of the claim petition till the date of deposit, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment. The claimants are directed to pay the deficit Court fee on the enhanced compensation. The compensation amount shall be shared as per the apportionment of compensation awarded by the Tribunal and the share of the second claimant, who is a minor



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daughter kept in cumulative fixed deposit in any of the nationalised banks in the name of the minor daughter i.e. the second claimant till she attains majority.

On such deposit being made, the claimants 1, 3 and 4 shall be entitled to withdraw the same by making proper application before the Tribunal.

12.In the result, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

29.11.2024

Index: Yes/No

Speaking order : Yes/No

Neutral Citation : Yes/No

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To

1.The Special District Court to deal with MCOP Cases No.1,
Thiruvallur.

2.The Manager,
HDFC ERGO General Insurance Company Ltd.,
No.94/95, R.R.Towers, 2nd Floor,
Industrial Guindy, Chennai - 23.

3.The Section Officer,
V.R.Section,
High Court, Madras.



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K.RAJASEKAR, J.
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