



C.M.A. No. 1151 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 14.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.1151 of 2022

1. Shanthi
2. Minor. Nithish
3. Minor. Guruprasath
4. Minor. Varunprasanth
(Minors rep. by their mother Shanthi)

5. Aandal ... Petitioners/ Appellants

Vs.

1. Chennaram Narasimulu Goud
2. The Divisional Manager,
The New India Assurance Company Limited,
Divisional Office,
Santhosima Complex,
R.T.C. X.Road,
Hyderabad - 500020. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 20.11.2018 in M.C.O.P. No.187 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court for Motor Accident Claims Cases, Krishnagiri.



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For Appellants : Mr. S. P. Yuaraj
For R1 : No Appearance
For R2 : Mr. K. Vinod

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant, seeking enhancement of compensation in M.C.O.P. No.187 of 2018 dated 20.11.2018, on the file of the Motor Accident Claims Tribunal, Special District Court for Motor Accident Claims Cases, Krishnagiri.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The case of the claimants/ appellants is that they have filed claim petition seeking compensation for a sum of Rs.50,00,000/- by invoking Section 166 of the Motor Vehicles Act, 1988, for the death of one Varathan Murugan @ Murugan, who died in a road accident that took place on 21.07.2017. According to the claimants, while the deceased Murugan was driving a container lorry bearing Registration No.TN-18-C-6706 on the



Ellapor to Ankola National Highway - 63, at about 11:15 AM, near Molemane, Sunkal Village, a lorry belongs to the first respondent driven by its driver in a rash and negligent manner, came in the opposite direction without applying necessary lights, hit on the lorry driven by the deceased, which resulted in causing severe injuries to the deceased and he succumbed on the way to hospital. In this regard, a criminal case in Crime No.232/2017 under Section 279, 337, 338 and 304(A) of IPC has been registered against the first respondent's lorry driver.

4. Before the Tribunal, the first respondent, who is the owner of the lorry had not contested the claim and remained ex-parte. The second respondent - insurance company has contested the claim, disputed the manner in which the accident has taken place and contended that the deceased has driven the vehicle in negligent manner, which resulted in accident. The insurance company also contended that the compensation claimed under various heads are on the higher side.

5. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P.1 to P.20 were marked and on the side of

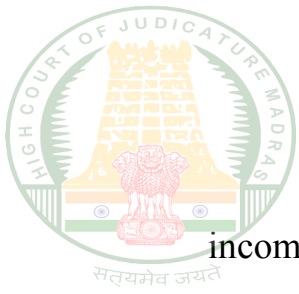


the respondents, no witnesses were examined and no exhibits were marked.

The Tribunal after considering the evidence placed on record, accepted the case of the claimants that the driver of the first respondent's lorry had driven the lorry in rash and negligent manner and caused the accident, which resulted in death of the said Murugan, the Tribunal has also quantified and awarded compensation for a sum of Rs.20,86,000/- to the claimants along with interest @ 7.5% per annum from the date of claim petition till the date of realization.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants have come forward with this appeal.

7. The learned counsel appearing for the claimants submits that the Tribunal has fixed the monthly notional income of the deceased as Rs.10,000/- per month, which is on the lower side and the Tribunal has also failed to grant appropriate consortium to the claimants. He has also relied on the judgment of this Court in *Jebastin Punitha vs. Selvaraj and the Oriental Insurance Company in C.M.A.No.1236 of 2018, dated 18.12.2018 [2019(1) TNMAC 257 (DB)]*, wherein the monthly notional



income to a lorry driver is fixed to the extent of Rs.15,000/- per month.

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8. Per contra, the learned counsel appearing for the insurance company submits that the monthly notional income, claimed by the claimants is excessive. The Tribunal after considering the evidence placed on record has rightly fixed Rs.10,000/- per month, as monthly notional income of the deceased. He further submitted that the Central Government notification dated 03.01.2020, while exercising the power under Section 4(1-A) of the Employee's Compensation Act, 1923, awarded compensation under the Employee's Compensation Act has notified the income of the employee, including the driver as Rs.15,000/- per month, with effect from 03.01.2020. By relying on this notification, the learned counsel for the insurance company, further contested that fixing the monthly notional income of Rs.15,000/- for a driver, who died in a road accident on 21.07.2017, would be absolutely on the higher side, therefore prays to dismiss the appeal.

9. I have considered the submissions made on both sides and perused the entire materials available on record.



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10. A Division Bench of this Court in ***Jebastin Punitha case*** cited supra, while fixing the monthly notional income for a driver, who died in the road accident on 25.05.2014, fixed the notional income as Rs.15,000/- per month. Admittedly, in this case, the deceased died during the course of his employment, further the dependents of the deceased have not invoked the Employee's Compensation Act, but they have come forward with the petition under Section 166 of the Motor Vehicles Act, 1988 and the same is maintainable under Section 167 of the Motor Vehicles Act.

11. There is no dispute that the Central Government has refixed the notional income of the employees, who died during the course of his employment as Rs.15,000/-, as per the Notification dated 03.01.2020. This Notification was made by exercising the powers under Section 4(1-A) of the Employees Compensation Act by the Central Government, by enhancing the monthly notional income from Rs.8,000/- to Rs.15,000/-. However, the present claim petition has been filed by the claimants by invoking Section 166 of the Motor Vehicles Act, hence the structured formula, provided under the Employee's Compensation Act shall not be followed in this claim



petition. Therefore, this Court by considering the age of the deceased and nature of work carried out by the deceased finds that fixing Rs.14,000/- per month as notional income of the deceased, would be appropriate.

12. The Tribunal by following the dictum laid down in *National Insurance Co. Ltd., vs. Pranay Sethi and other [2017 (16) SCC 680]* and *Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 (6) SCC 121]*, fixed 40% as future prospectus and the multiplier as '16', by considering the age of the deceased. This Court finds no infirmity in the above fixing of future prospectus and multiplier, further, considering that the claimants herein are five in numbers, after deducting one-fourth (1/4) of the monthly income towards the personal and living expenses of the deceased, the compensation under loss of income with future prospectus is modified as **Rs.28,22,400/-**.

Annual income (Rs.14,000/- x 12)	= Rs.1,68,000/-
Future prospects @ 40%	= Rs.67,200/-
Yearly income of the deceased	= Rs.2,35,200/-
Yearly contribution to his family (deduction of 1/4)	= Rs.1,76,400/-
Applicable Multiplier	= 16
Total compensation (Rs.1,76,400/- x 16)	= Rs.28,22,400/-



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13. The Tribunal has awarded Rs.40,000/- under the head consortium to the claimants, but as per the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs Nanu Ram [2018 ACJ 2018]***, all the claimants are entitled for consortium. Hence, this Court is inclined to grant the claimants, consortium of Rs.40,000/- each to the wife, sons and mother of the deceased Varatha Murugan @ Murugan, as per the Apex Court Judgment stated supra, accordingly, the compensation under the head consortium is enhanced to **Rs.2,00,000/-** (Rs.40,000/- X 5). As far as compensation under other conventional heads are concerned, the same is proper and this Court finds no interference.

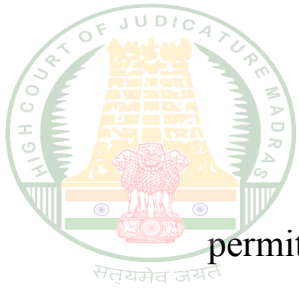
14. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	20,16,000/-	28,22,400/-	Enhanced
2.	Loss of consortium	40,000/-	2,00,000/-	Enhanced
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total Compensation	20,86,000/-	30,52,400/-	Enhanced



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15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.20,86,000/- is hereby enhanced to **Rs.30,52,400/- [Rupees Thirty Lakh Fifty Two Thousand and Four Hundred only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded 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.187 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court for Motor Accident Claims Cases, Krishnagiri. On such deposit, the first and fifth appellants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. As far as minor claimants/ appellants 2 to 4 herein are concerned, the award amount to the minor claimants shall be deposited in the name of the minor claimants in any one of the Nationalized Bank in Fixed Deposit under the guardianship of their mother/ 1st appellant herein, till they attain the age of majority, and the 1st appellant herein is also



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permitted to withdraw the accrued interest, every six months for the welfare of minor claimants, if they already attained the age of majority, their share amount may be dispersed. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Accounts of the first and fifth appellants. Since, this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. Consequently, connected miscellaneous petition, if any stands closed. There shall be no order as to costs in the present appeal.

14.11.2024

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:
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1. The Special District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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