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CMA.No.3341 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.3341 of 2024

1. S.Amutha
2. S.Rajamanickam
3. S.Vijayalakshmi

M.Viswanathan (*Died*)

Sampoorani (*Died*)

(Cause title accepted, vide order dated 22.10.2024 made in CMP.No.21772 of 2024 in CMA.SR.No.124987 of 2024.) ...Appellants

Vs.

1. P.Shiva
2. M/s. New India Insurance Company Limited,
Srinath Complex, 2nd Floor,
New Cotton Market, Hubli,
Having Divisional office at Sri Vari Shopping Mall,
II Floor, 2.91m New Bus Stand Road,
Meyyanur, Salem.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and decree dated 26.04.2022 made in MCOP.No.261 of 2009 on the file of the Special District Judge, MCOP Tribunal, Salem.



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For Appellants : Mr.L.Ramanathan

For Respondents : Mr.J.Chandran, for R2
: Notice dispensed with, for R1

JUDGMENT

Challenging the judgment and decree dated 26.04.2022 made in MCOP.No.261 of 2009 on the file of the learned Special District Judge, MCOP Tribunal, Salem, the claimants have come up with this appeal.

2. Mr.J.Chandran, learned counsel takes notice on behalf of the 2nd respondent. In view of the consent expressed by the learned counsel on either side, this appeal is taken up for final disposal at the admission stage itself.

3. Since the 1st respondent was set exparte before the tribunal, notice to the 1st respondent is dispensed with.

4. It is the case of the claimants that, on 20.11.2008 at about 23.30 hours, when the deceased Shanmugam was riding a two wheeler bearing



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Regn.No.TN-30-H-1447 in Salem-Namakkal main road towards Salem, at that time, a Bus bearing Regn.No.KA-25-TR-4719 owned by the 1st respondent insured with the 2nd respondent was running in front of the two wheeler in which the deceased was travelling and as the driver of the said bus drove the same in a rash and negligent manner and applied sudden brake, the deceased got hit by the back side of the said bus, due to which, he sustained grievous injuries and succumbed to the same. Thereby, the appellants, who are the dependents of the deceased Shanmugam filed a claim petition in MCOP.No.261 of 2009 claiming a compensation of Rs.15,00,000/-. Before the Tribunal, the claimants examined two witnesses viz. P.W.1 and P.W.2 and marked exhibits P.1 to P.19 and X.1 and on the side of respondents, one witness viz. R.W.1 was examined and exhibits R.1 & R.2 were marked. After trial, though the Tribunal, on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the driver of the 1st respondent vehicle, however, awarded a meagre compensation of Rs.8,34,000/- towards compensation for the death of the deceased Shanmugam. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have



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come up with this appeal seeking enhancement of compensation.

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5. Learned counsel for the appellants submitted that the above said accident happened solely due to the rash and negligent driving on the part of the driver of the 1st respondent vehicle and the accident is of the year 2008 and at the time of accident, the deceased was only aged about 46 years and was working as a Cotton Textile Cloth Designer and was earning a sum of Rs.12,000/- per month, however, the tribunal had taken the notional income of the deceased as Rs.7,000/- including the future prospectus, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions and thereby, the same has to be increased to Rs.12,000/-. Further, the compensation awarded under other heads are also on the lower side and the same needs to be enhanced. Accordingly, he prayed for appropriate orders.

6. Per contra, the learned counsel appearing on behalf of the 2nd respondent-Insurance Company contended that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for



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dismissal of the appeal.

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7. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties and therefore, this Court is not venturing into the same.

9. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2008 and at the time of accident, the deceased was aged about 46 years and he was working as a cotton textile Cloth designer and the Tribunal has fixed the notional monthly income at Rs.7,000/- including 25% future prospectus, which is on the lower side. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1) TANMAC 459**, and also considering the age of the deceased as also the claimants, fixing a notional income of Rs.6,500/- and adding future prospects at 25%, as has been held by the Constitution Bench in the case



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of *National Insurance Company Limited Vs. Pranay sethi and others* reported in *2017 (16) Supreme Court Cases 680*, the income per month is quantified at Rs.8,125/-. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.5,416.60/- per month and the same is rounded off to **Rs.5,420/-** per month and the deceased being aged about 46 years, as evidenced from the records, adopting the multiplier of 13 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in *(2009) 6 SCC 121*, the loss of income to the family is arrived at Rs.5,420/- * 12 * 13 = Rs.8,45,520/-.

10. While passing the impugned award, pending the claim petition, the parents of the deceased passed away and, therefore, a sum of Rs.3 Lakhs was deducted by the Tribunal towards their share. However, it is to be pointed out that deducting the amount payable to the parents who died pending the claim petition is wholly erroneous and, therefore, the said deduction is set aside.

11. Insofar as the compensation awarded under the other heads are concerned, it is evident from Medical bills, Ex.P.6 that, a sum of



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Rs.1,79,121/- has been spent towards medical expenses of the deceased, however, the tribunal without assigning any reason, has awarded only a sum of Rs.1,50,000/-, which is not sustainable, hence, the same is enhanced to Rs.1,79,121/- and no compensation has been awarded under the head Loss of estate and thereby, a sum of Rs.15,000/- is awarded under the said head. At the same time, a sum of Rs.25,000/- is awarded under the head Funeral Expenses, which is on the higher side and thereby, the same is reduced to Rs.15,000/-. Further, a sum of Rs.1,00,000/- has been awarded under the head Loss of Love and affection, however, no amount has been awarded under the head 'Loss of Consortium'. Therefore, this Court awards a sum of Rs.1,20,000/- in all under the aforesaid heads.

12. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of income	8,19,000/-	8,45,520/-
Loss of love and affection & Loss of	1,00,000/-	1, 20,000/-



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Consortium		
Medical Expenses	1,50,000/-	1,79,121/-
Funeral Expenses	25,000/-	15,000/-
Loss of estate	-	15,000/-
Total	11,34,000/- After deducting 3 Lakhs, the total compensation is fixed at Rs.8,34,000/-	11,74,641/-

13. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.261 of 2009 is modified by enhancing the compensation amount from Rs.8,34,000/- to **Rs.11,74,641/-**. The 2nd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No.261 of 2009 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks

from the date of receipt of a copy of this judgment. The 1st and 3rd



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appellants are entitled to a compensation of Rs.4,69,856.40/- each and the 2nd appellant is entitled to a sum of Rs.2,34,928.20/-. On such deposit being made, the Tribunal is directed to transfer the said amount to the appellants/claimants directly to their bank accounts through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in this appeal.

20.12.2024

skt

NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

To:

1. The Special District Judge, MCOP Tribunal,
Salem.
2. The Section Officer,
V.R. Section, High Court, Madras.

M.DHANDAPANI, J.



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