



C.M.A.No.2925 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.2925 of 2023

1.Abitha
2.Minor Subiksha
Rep by mother/1st appellant
3.Punniyavathi
4.Pazhanivel

...Appellant

Vs

1.Muniraj
2.Prabakaran
3.The New India Assurance Company Ltd.,
Motor TP HUB, No.179,
Jawaharlal Nehru Salai,
Pondicherry.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal and to enhance the amount awarded in MCOP.No.01 of 2021 dated 29.09.2022 on the file of the III Additional District Judge, Cuddalore at Vridhachalam (MACT Court).



C.M.A.No.2925 of 2023

For Appellant : Mr.S.Udhayakumar

For Respondent : Notice Dispensed with for R1 & R2
Mr.J.Chandran for R23

JUDGMENT

The appeal has been filed against the quantum of compensation awarded by the Tribunal vide order dated 29.09.2022 in MCOP.No.01 of 2021

2. The learned counsel for the appellant would submit that on 18.12.2020, when one Rajasekaran was riding his motor cycle at Kalkeni Street, Periyaathukurichi Village, a van belongs to 1st respondent bearing Registration No.TN-78-A-9033 came in a rash and negligent manner and dashed against him and another Van belongs to 2nd respondent bearing Registration No.TN-11-S-9673 came and dashed behind the aforesaid Van of the 1st respondent. Due to the said accident, the said Rajasekaran was died on the spot. Considering all the aspects the Tribunal had awarded the following compensation:

<i>S.No</i>	<i>Particulars</i>	<i>Compensation (Rs.)</i>
1	Loss of Income	18,14,400
2	Loss of Love and Affection	40,000
3	Funeral Expenses	15,000
	Total	18,69,400



C.M.A.No.2925 of 2023

WEB COPY

3. Further, he would submit that after working in abroad for nearly 6 years, the said Rajasekaran came to India only for marriage purpose and he planned to return to abroad, due to which he had renewed his passport. In abroad, he worked as a Fitter in a Private Company and earned a sum of Rs.50,000/- per month. However, without considering the said aspect, the Tribunal had fixed the notional income of the deceased as a sum of Rs.9,000/-, which is on lower side. He would also submit that the compensation awarded towards loss of love and affection, for a sum of Rs.40,000/- for 4 claimants, is too low and no amount was awarded towards the loss of estate and transportation. Hence, he would request this Court to re-determine the compensation awarded by the Tribunal.

4. In reply, the learned counsel appearing for the respondents would submit that merely renewing the passport does not amount to returning to abroad and hence, considering the nature of his avocation in India, the Tribunal had fixed a sum of Rs.9,000/- as notional income of the deceased. However, after some arguments, he would fairly submit that considering the facts and



C.M.A.No.2925 of 2023

circumstances of this case, any reasonable amount may be fixed as notional income of the deceased.

5. Heard the learned counsel for the appellant and the respondent and also perused the materials available on record.

6. In the present case, the deceased Rajasekaran came to India after working for nearly 6 years in abroad. In this regard, the claimants had produced the Visa details of Rajasekaran. On perusal of the documents, it appears that the said Rajasekaran came back to India in the year 2019 for marriage purpose and no proof available on the aspect of his return to abroad. When such being the case, taking into consideration of the salary of a Fitter in both Foreign countries and in India, this Court is of the view that the notional income of a sum of Rs.9,000/- fixed by the Tribunal is too low.

7. Therefore, considering the year of accident and age and avocation of the deceased, this Court is inclined to fix a sum of Rs.16,000/- as notional income of the deceased. Accordingly, by adding 40% future prospects, by



C.M.A.No.2925 of 2023

applying 16 as multiplier and also by deducting 1/4 towards personal expenses of the deceased, the loss of income would be calculated as follows:

$$\text{Rs.16,000/- (notional income) + Rs.6,400/- (40\% future prospects) * 16 (multiplier) * 12 (months) * 3/4 (personal expenses) = Rs.32,25,600/-}$$

8. As far as the loss of consortium is concerned, the Tribunal had awarded a sum of Rs.40,000/- i.e., Rs.10,000/- each, appears to be low. Hence, as per the law laid down by the Hon'ble Apex Court, this Court is inclined to award a sum of Rs.1,60,000/- i.e., Rs.40,000/- each towards the loss of consortium.

9. Further, it appears that no amount was awarded by the Tribunal towards the loss of estate and transportation. Hence, this Court is inclined to award a sum of Rs.15,000/- towards loss of estate and a sum of Rs.10,000/- towards Transportation.

10. Accordingly, the compensation awarded by the Tribunal is modified as follows:



C.M.A.No.2925 of 2023

S.No	Particulars	Compensation awarded by the Tribunal (Rs.)	Compensation awarded by this Court (Rs.)
1	Loss of Income	18,14,400	32,25,600
2	Loss of Love and Affection	40,000	1,60,000
3	Funeral Expenses	15,000	15,000
4	Transportation	Nil	10,000
5	Loss of Estate	Nil	15,000
	Total	18,69,400	34,25,600

11. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.34,25,600/-. Accordingly, the award amount stands enhanced from a sum of Rs.18,69,400/- to Rs.34,25,600/-. In all other aspects, the award of the Tribunal stands confirmed. It is also made clear that the compensation will be awarded to the claimants in the following proportions:

- i) 1st appellant/Wife of the deceased – Rs.10,25,600/-
- ii) 2nd appellant/Daughter of the deceased – Rs.17,00,000/-
- iii) 3rd appellant/Mother of the deceased – Rs.5,00,000/-
- iv) 4th appellant/Father of the deceased – Rs.2,00,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the 3rd respondent/insurance company is directed to deposit a sum of



C.M.A.No.2925 of 2023

Rs.34,25,600/- along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.1 of 2021 on the file of the III Additional District Court, Virudhachalam. Upon such deposit, the share of the minor 2nd appellant i.e a sum of Rs.17,00,000/- is directed to be deposited in any one of the Nationalised Bank till she attains majority and the 1st appellant being the mother of the minor is permitted to withdraw the accrued interest once in three months for the welfare of the minor. Further, the Tribunal is directed to transfer the share of the appellants 1, 3 and 4 to their respective bank accounts, as per the proportion determined by this Court, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained for the claimants or application for withdrawal from the claimants, whichever is earlier. No costs.

20.02.2024

Index: Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

nsa



WEB COPY



C.M.A.No.2925 of 2023

KRISHNAN RAMASAMY,J.

nsa

C.M.A.No.2925 of 2023

20.02.2024