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C.M.A.No.587 of 2023

IN THE HIGH OF JUDICATURE AT MADRAS

DATED :30.01.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.587 of 2023

1. N.Uma
2. M.Neelakandan
3. Nishanthi Minor
(rep. by her mother, guardian
and next friend, N.Uma/first appellant)

... Appellants

Vs.

1. C.Senguttuvan
2. The National Insurance Co. Ltd.,
having its Office at No.661, Trunk Road,
Poonamallee, Chennai – 600 056.

...Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.02.2022 made in M.C.O.P.No.194 of 2019, on the file of the Motor Accident Claims Tribunal/II Additional District and Sessions Judge, Thiruvallur, Poonamallee.



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For Appellant : M/s.A.Subadra

For Respondent- 1 : Mr.K.Varadhakumaraj

For Respondent-2 : Mr.M.A.Prashanth Kumaran
for Mr.Devanathan

JUDGEMENT

Questioning the quantum of compensation awarded by the Tribunal, the present Appeal has been preferred by the appellants/claimants.

2. On 20.11.2018 at about 08.00 hours, when the deceased was riding a Motorcycle, bearing Regn.No. TN-22-AE-9043, on Nazarathpet Agaramel M.G.R.Salai, in front of T.K.M.Store, the first respondent's Vehicle, viz., Mahindra Maxi Cab Van, bearing Regn.TN-20-CZ-4344 being driven by its driver came from the opposite direction in a rash and negligent manner and dashed against the Motorcycle, due to which, the deceased sustained serious head injuries and died on the way to the Hospital. Hence, the claimants, being the parents and sister of the deceased filed a Claim Petition seeking a sum of Rs. 20,00,000/- as compensation.

3. The Tribunal, on consideration of oral and documentary



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evidence held that the accident occurred due to rash and negligence on the part of the Driver of the first respondent's Vehicle, and hence, directed the respondent/Insurance Company to pay a compensation of Rs.14,70,800/- to the claimants together with interest at the rate of 7.5% p.a. from the date of filing of the Petition and till the date of realization.

4. Aggrieved over the award passed by the Tribunal, the appellants/claimants have filed the present appeal seeking for enhancement of compensation, as stated supra.

5. M/s.A.Subadra, learned counsel appearing on behalf of appellants/claimants submitted that the Tribunal, while determining the compensation towards Loss of Dependency, fixed the notional income of the deceased at Rs.9,000/- which is meager. The learned counsel would submit that at the time of the accident, the deceased was aged about 18 years and was working as a Mechanic, possessing high technical skills, but, the Tribunal, without considering the same, on its own accord, fixed the notional income of the deceased only at Rs.9,000/- which is not fair and hence, she



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prayed that a sum of Rs.18,000/- may be fixed as notional income of the deceased, since the accident occurred in the 2018.

6. It is seen from records that notice to the first respondent, viz., owner of the offending vehicle has been dispensed with by this Court, vide order dated 21.02.2023, in C.M.P.No.19282 of 2022 of this Appeal, however, when the matter is taken up for hearing, Mr.K.Varadhakumaraj, learned counsel has entered appearance on behalf of the first respondent and also submitted that the award passed by the Tribunal requires no modification and the same may be confirmed.

7. Mr.M.A.Prashanth Kumaran, learned counsel for the second respondent/Insurance Company also submitted the award passed by the Tribunal is well and good and requires no interference.

8. Heard the learned counsel for the appellants/claimants and the learned counsel for the respondents and perused the materials on record.

9. Therefore, this Court, taking into consideration of the age (18



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years) occupation of the deceased (Mechanic) and year of the accident, (2018), suggested as to whether a sum of Rs.15,000/-shall be fixed as notional monthly income of the deceased, to which, Mr.M.A.Prashanth Kumaran, learned counsel for the second respondent/Insurance Company insisted to fix a sum of Rs.13,000/- as notional monthly income. Accordingly, this Court fix a sum of Rs.13,000/- as notional monthly income of the deceased, which would be just and reasonable, instead of Rs.9,000/- p.m., as that was wrongly fixed by the Tribunal. Thus, by fixing the notional monthly income of the deceased at Rs.13,000/-; adding 40% towards future prospects; deducting 50% towards his personal expenses (since the deceased was a Bachelor) and by applying right multiplier of '18' (since the deceased was aged 18 years), the compensation towards Loss of Dependency is calculated as under:-

Notional Monthly income + 40% future prospects
(i.e. Rs.13,000/- + Rs.5,200) = Rs.18,200/-

(Deduction of $\frac{1}{2}$ x (Multiplier of '18')
towards personal expenses)
9,100/- x $\frac{1}{2}$ x 12 x 18 = Rs.19,65,600/-

9.1 Consequently, the sum of Rs.13,60,800/- awarded by the



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Tribunal under the head of 'Loss of Dependency' is hereby modified and enhanced to **Rs.19,65,600/-**.

9.2 Further, this Court finds that the Tribunal has failed to award any compensation to the third appellant, who is none other than sister of the deceased. Hence, this Court is inclined to fix a sum of Rs.40,000/- as compensation.

9.3 Insofar as the compensation awarded by the Tribunal under all other heads are concerned, this Court finds the same to be just and proper and is hereby confirmed.

10. Thus, the total compensation payable to the appellants/claimants under various Heads is as hereunder:-



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<i>S.N o</i>	<i>Head</i>	<i>Amount granted</i>
1.	Loss of Dependency	Rs.19,65,600/-
2	Filial Consortium(father & mother)	Rs. 80,000/-
3	Loss of Love and Affection to Siblings (sister)	Rs. 40,000/-
4	Funeral Expenses	Rs. 15,000/-
5	Loss of Estate	Rs. 15,000/-
Total		Rs.21,15,600/-

10.1 Consequently, the total compensation amount of **Rs.14,70,800/-** awarded by the Tribunal is hereby modified and enhanced to **Rs.21,15,600/-**, which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit, out of which, first appellant, the mother of the deceased is entitled to a sum of **Rs.10,00,000/-** together with proportionate interest ; second appellant, father of the deceased is entitled to **Rs.7,00,000/-** and third appellant, sister of the deceased is entitled to a sum of **Rs.4,15,600/-** together with proportionate interest.



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11. In the result, this Civil Miscellaneous Appeal filed by the appellants/claimants is partly allowed on the following terms:-

(i) The second respondent, Insurance Company is directed to deposit the entire amount awarded by this Court equally along with interest at the rate of 7.5 % p.a. and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the Insurance Company, the Tribunal shall transfer the amount directly to the claimants' respective bank accounts through RTGS within a period of three weeks thereon.

(iii) The appellants/claimants are entitled to withdraw the entire award amount, less the amount already withdrawn, if any, by making necessary application before the Tribunal.



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iv) As regards the award amount to be disbursed to the minor claimant, the third appellant is concerned, on deposit of the award amount being made by the second respondent/Insurance Company, Tribunal shall transfer the entire award amount belonging to the minor, in her name, in any of the Nationalized Bank, in an interest bearing FD Account till the minor attain majority and the interest accrued thereon shall also be retained in her account, and once the minor attained Majority, Tribunal shall take steps to settle the award amount to the claimant in accordance with law.

v) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any.

vi) Since this Appeal has been filed with a delay of 139 days, the appellants/claimants shall forgo the interest for the delay period, as already stated by this Court while condoning the delay, in its order, dated 21.02.2023, made in C.M.P.No.19282 of 2022 in C.M.A.Sr.No.120929 of 2022.

vii) There shall be no order as to costs.

30.01.2024

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To

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The II Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Thiruvallur, Poonamallee.

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Krishnan Ramasamy,J.,
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