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CMA.No.3040 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM

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

CMA.No.3040 of 2024

1. A.Sevathamani
 2. A.Chinnammal
- ...Appellants

Vs.

1. M.Ramesh
 2. United India Insurance Company Limited,
Motor Third Party Claims-Hub,
Silingi Buildings, No.134, Greams Road,
Chennai – 600 006.
- ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this Civil Miscellaneous Appeal and enhance the compensation awarded in the fair order dated 05.10.2023 made in MCOP.No.2998 of 2020 on the file of the Special Sub Judge – II, Motor Accidents Claims Tribunal, (Court of Small Causes, Chennai).

For Appellants : M/s.P.T.Saleem Fathima
for M/s.M.S.Elangovan Law Associates

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



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JUDGMENT

Challenging the judgment and decree dated 05.10.2023 made in MCOP.No.2998 of 2020 on the file of the Special Sub Judge – II, Motor Accidents Claims Tribunal (Court of Small Causes, Chennai), the claimants have come up with this appeal.

2. Since the 1st respondent remained exparte before the tribunal, notice to the 1st respondent is dispensed with.

3. It is the case of the claimants that, on 13.03.2020 at about 06.30 hours, when the deceased Adaikkan was travelling as a pillion rider in the TVS XL Moped bearing Reg.No.TN-45-BX-5226 in the left side of the Madurai to Trichy highway, at that time, an Eicher van bearing Reg.No.TN-72-BY-0783 owned by the 1st respondent insured with the 2nd respondent driven by its driver in a rash and negligent manner came in the same direction and dashed against the Moped in which the deceased was travelling, due to which the said Adaikkan sustained grievous injuries and died on the way to hospital. Thereby, the appellants, who are the dependents of the deceased Adaikkan filed a claim petition in



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MCOP.No.2998 of 2020 claiming a compensation of Rs.30,00,000/-.

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Before the Tribunal, the claimants examined two witnesses viz. P.W.1 and P.W.2 and marked Exhibits P.1 to P.11 and the respondents examined one witness viz., RW1 and marked Exhibits R.1 & R.2. After trial, 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 1st respondent van driver and awarded Rs.10,78,000/- towards compensation for the death of the deceased Adaikkan. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have come up with this appeal seeking enhancement of compensation.

4. 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 van and the accident is of the year 2020 and at the time of accident, the deceased was only aged about 55 years and was an agriculturist by profession and was also doing cattle business and was earning a sum of Rs.30,000/- per month, however, the tribunal had taken the notional income of the deceased as Rs.10,000/-,



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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 interfered with. 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.

5. 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 dismissal of the appeal.

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

7. The factum and manner of the accident is not disputed by the parties and the parties have not raised any issue on the aspect of negligence and therefore, this Court is not venturing into the same.



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8. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2020 and at the time of accident, the deceased was aged about 55 years and he was an agriculturist by profession and was also doing cattle business in addition to the same, however, the Tribunal had fixed the notional monthly income at Rs.10,000/-, 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.15,000/- and adding future prospects at 10%, as has been held by the Constitution Bench in the case 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.16,500/-. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.11,000/- per month and the deceased being aged about 55 years, as evidenced from the records, adopting the multiplier of 11 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6***



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SCC 121, the loss of income to the family is arrived at Rs.11,000/- * 12 *

11 = Rs.14,52,000/-.

9. Insofar as the compensation awarded under the other heads are concerned, this Court is of the view that the compensation awarded under other heads are just and reasonable and the same does not requires interference of this Court.

10. 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 dependency	9,68,000/-	14,52,000/-
Loss of consortium	80,000/-	80,000/-
Funeral Expenses	15,000/-	15,000/-
Loss of estate	15,000/-	15,000/-
Medical bills	-	-
Total	10,78,000/-	15,62,000/-

11. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.2998



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of 2020 is modified by enhancing the compensation amount from Rs.10,78,000/- to **Rs.15,62,000/-**. The 2nd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No.2998 of 2020 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. In the above compensation, the 1st appellant is entitled to Rs.12,00,000/- and the 2nd appellant is entitled to a sum of Rs.3,62,000/- with proportionate interest and costs. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. It is underscored that the appellants are not entitled to any interest for the default period, if any. No costs.

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



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M.DHANDAPANI, J.

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To:

1. The Special Sub Judge – II,
Motor Accidents Claims Tribunal, Court of Small Causes,
Chennai.
2. The Section Officer,
V.R. Section, High Court, Madras.

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