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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1530 of 2024

1.Usha

2.Kavinilavu

3.Kavimathi

4.Minor Tharani

..Appellants

[Minor 4th appellant is represented by her mother and guardian 1st appellant Usha]

.vs.

1.S.Arafath

2.Manager,

Kotak Mahindra General Insurance Co., Ltd.,

No.402, L, Samson Tower, 5th Floor,

Pantheon Road, Egmore,

Chennai – 600 008.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Decree and Judgment in MACTOP No.159 of 2020 dated 18.08.2022 on the file of the Motor Accident Claims Tribunal (II Addl. District & Sessions Court) Chidambaram.



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For Appellants : Mr.A.Muthukumar

For Respondent : Mr.S.Arunkumar for R2

JUDGMENT

The claimants who are the wife and children of the deceased Loganathan not being satisfied with the quantum of compensation awarded by the Tribunal in MACTOP No.159 of 2020, dated 18.08.2022, have filed this appeal seeking for enhancement of compensation.

2.The case of the claimants is that the deceased Loganathan was travelling in a two wheeler as a pillion rider which was driven by one Murugan on 28.09.2020 at Keezhavallam-Manikavasal Road and at about 6.45 p.m., the offending vehicle which was coming in the same direction hit the two wheeler. As a result of which, the deceased was thrown out of the vehicle and he sustained fatal injuries and he died on 29.02.2020. An FIR came to be registered in Crime No.893 of 2020 against the driver of the offending vehicle. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the



accident had taken place only due to the rash and negligent driving on the part of the offending vehicle. Having rendered such a finding, the Tribunal fixed the total compensation at Rs.16,07,500/- under various heads as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income	14,17,500
2.	Loss of Consortium	40,000
3.	Loss of Love and Affection	1,20,000
4.	Loss of Amenities	15,000
5.	Funeral Expenses	15,000
	Total	16,07,500

4.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

5.The claimants not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal before this Court seeking for enhancement of compensation.

6.Heard Mr.A.Muthukumar, learned counsel appearing on behalf of the appellant and Mr.S.Arunkumar, learned counsel appearing on behalf of the 2nd respondent.



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7. This Court has carefully considered the submissions made on either side and also the materials available on record.

8. The bone of contention is with regard to the notional monthly income that was fixed by the Tribunal. The claimants came up with a case that the deceased was working as a Mason and he was earning a sum of Rs.700/- to Rs.800/- every day. There was no proof before the Tribunal regarding the avocation of the deceased or the income earned by him. The Tribunal has fixed the notional monthly income at Rs.9,000/- which is on the lower side. Considering the fact that the accident had taken place in the year 2020 and there were at-least four dependants in this case and the claimant was working as a Mason, this Court is inclined to fix the notional monthly income at Rs.15,000/-. Considering the age of the deceased, who was 45 years at the time of his demise, 25% can be added towards future prospects. Thus, the notional monthly income can be fixed at Rs.18,750/- (Rs.15,000 + Rs.3750(25%)). The compensation under the head of loss of income/dependency is calculated as follows:

$$\text{Rs.18,750} \times 12 \times 14 \times \frac{1}{4} = \text{Rs.23,62,500/-}$$



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9.The compensation that has been fixed under the other heads are reasonable and does not require the interference of this Court.

10.In the light of the above discussion, the compensation awarded by the tribunal is modified as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income	23,62,500
2.	Loss of Consortium	40,000
3.	Loss of Love and Affection	1,20,000
4.	Loss of Amenities	15,000
5.	Funeral Expenses	15,000
	Total	25,52,500

11.The compensation awarded by the tribunal at Rs.16,07,500/- is enhanced to Rs.25,52,500/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.25,52,500/-, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of



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ssr

Rs.9,45,000/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay period of 323 days as was ordered by this Court in C.M.P.No.26332 of 2023, dated 04.06.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the claimants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

12.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

05.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Motor Accident Claims Tribunal
(II Addl. District & Sessions Court) Chidambaram.

05.07.2024