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CMA.No.3045 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM

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

CMA.No.3045 of 2024

1. P.Bhuvana
2. Minor P.Rokith
3. Minor P.Yuvaraj
Minor appellants 2 & 3 rep. by Natural Guardian
Mother P.Bhuvana/1st appellant
4. V.Rajamani ...Appellants

Vs.

1. Aleyamma Viju
2. United India Insurance Company Limited,
No.132, 4th Floor, Sillingi Building,
Greens Road, Chennai – 600 039. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this Civil Miscellaneous appeal by enhancing the compensation awarded in the judgment and decree dated 08.07.2024 passed in MCOP.No.507 of 2023 on the file of the Motor Accident Claims Tribunal (in the V Court of Small Causes, Chennai).



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For Appellants : Mr.K.Balaji

For Respondents : Mr.K.Swaminathan, for R2
: Notice dispensed with, for R1

JUDGMENT

Challenging the judgment and decree dated 08.07.2024 made in MCOP.No.507 of 2023 on the file of the Motor Accident Claims Tribunal (in the V Court of Small Causes, Chennai), the claimants have come up with this appeal.

2. Mr.K.Swaminathan, 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 remained ex parte before the tribunal, notice to the 1st respondent is dispensed with.

4. It is the case of the claimants that, on 12.11.2022 at about 20.00 hours, when the deceased Pazhani was walking as a Pedestrian in the left



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side of the road from north to south direction proceeding from Meeran Nagar at ECR Road, at that time, a car bearing Reg.No.TN-02-AX-9194 owned and driven by the 1st respondent insured with the 2nd respondent came in a rash and negligent manner in the same direction and dashed against the said Pazhani, due to which he sustained grievous injuries and succumbed to the same. Thereby, the appellants, who are the dependents of the deceased Pazhani filed a claim petition in MCOP.No.507 of 2023 claiming a compensation of Rs.50,00,000/-. Before the Tribunal, the claimants examined two witnesses viz. P.W.1 and P.W.2 and marked exhibits P.1 to P.15 and on the side of respondents no documents were marked and no witness was examined. 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 and awarded Rs.34,03,000/- towards compensation for the death of the deceased Pazhani. 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.



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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 1st respondent and the accident is of the year 2022 and at the time of accident, the deceased was only aged about 30 years and was working as a Gardener, however, the tribunal had taken the notional income of the deceased as Rs.15,000/-, 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.20,000/-. 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 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 the parties have not raised any issue on the aspect of negligence 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 2022 and at the time of accident, the deceased was aged about 30 years and he was a gardener by profession and the Tribunal has fixed the notional monthly income at Rs.15,000/-, 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.17,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in



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2017 (16) Supreme Court Cases 680, the income per month is quantified at Rs.23,800/-. Deducting 1/4th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.17,850/- per month and the deceased being aged about 30 years, as evidenced from the records, adopting the multiplier of 17 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.17,850/- * 12 * 17 = Rs.36,41,400/-.

10. 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.

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



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of dependency	32,13,000/-	36,41,400/-
Loss of consortium	1,60,000/-	1,60,000/-
Funeral Expenses	15,000/-	15,000/-
Loss of estate	15,000/-	15,000/-
Medical bills	-	-
Total	34,03,000/-	38,31,400/-

12. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.507 of 2023 is modified by enhancing the compensation amount from Rs.34,03,000/- to **Rs.38,31,400/-**. The 2nd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No.507 of 2023 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 appellant is entitled to get the award amount Rs.13,03,000/- and the second and third appellants are entitled to get the award amount of



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Rs.10,50,000/- each with proportionate interest and costs. The 4th appellant is entitled to a compensation of Rs.4,28,400/-. On such deposit being made, the Tribunal is directed to transfer the compensation amount apportioned in respect of the major claimants directly to the bank account of the major claimants through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. Insofar as the apportionment of compensation in favour of the minor appellants is concerned, the Tribunal is directed to invest the same in an interest bearing fixed deposit initially for a period of three years to be renewed till they attain majority and the quarterly interest accrued thereon shall be paid to the 1st claimant/mother of the minor claimants for being used for the welfare of the minors by the guardian. It is underscored that the appellants are not entitled to any interest for the default period, if any. No costs.

25.11.2024

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



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M.DHANDAPANI, J.

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To:

1. The Motor Accident Claims Tribunal,
V Court of Small Causes, Chennai.
2. The Section Officer,
V.R. Section, High Court, Madras.

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