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C.M.A.No.3116 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.3116 of 2023

1. Saritha
 2. Minor Deeksha Eswaran (one month)
 3. Chandra
- ... Appellants/Petitioners

Vs.

1. Shankar
 2. Bajaj Alliance General Insurance Company Ltd,
No.68, SLS Tower, Cherry Road,
Asthampatty Salem.
- ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 to enhance the compensation amount made in judgment and decree dated 01.03.2022 made in M.C.O.P.No.539 of 2020 on the file of the Motor Accident Claims Tribunal Special District Judge, Salem.

For Appellants : Mr.SP.Yuaraj
For R2 : Mr.J.Michael Visuvasam



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JUDGEMENT

This Civil Miscellaneous Appeal has been filed, challenging as against the compensation awarded by the Motor Accident Claims Tribunal Special District Judge, Salem in M.C.O.P.No.539 of 2020 dated 01.03.2022, the claimants are before this Court.

2. The brief facts are as follows:-

The appellants/petitioners are the wife, son and mother of deceased Akilan @ Manikandan. On 24.03.2020 at about 6.50 p.m., the first petitioner/appellant's husband was riding a two wheeler on the extreme left proceeding towards Mettur and when he reached near Sekkanur Barrage, a Bolero Maxi cab bearing Registration No.TN 93-A-8722, belonging to 1st respondent and insured with 2nd respondent/ Insurance Company, driven by its driver in a rash and negligent manner, dashed against the deceased, as a result of which, the deceased was thrown away and sustained grievous injuries all over his body and though he was taken to hospital and given treatment, unfortunately, he died on the same day. Thereafter, the appellants have filed a claim petition before the Tribunal,



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claiming a compensation of Rs.30,00,000/-.

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3. The learned counsel for the appellants submitted that at the time of accident, the deceased was working as a Welder and earning Rs.20,000/- per month. However, the Tribunal fixed the monthly income notionally at a sum of Rs.10,000/-, which is on lower side and the future prospects at 40% thereon, is also on lower side and hence, the same are required to be enhanced. That apart, the amount awarded under the head of “loss of love and affection” was also on the lower side, which requires to be enhanced. Further, the Tribunal has not awarded any amount under the head of “loss of estate” and the same is required to be awarded. Accordingly, he prays for appropriate enhancement of the compensation in favour of the appellants.

4. Per contra, the learned counsel appearing for the second respondent/Insurance Company would fairly submit that appropriate compensation may be granted by fixing the fair notional income of the deceased.



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5. Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

6. The fact and manner of the accident is not disputed by the parties. Therefore, this Court is not dealing with the said aspect. The only grievance of the appellants is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the appellants that though the deceased was aged 27 years at the time of accident and earning a sum of Rs.20,000/- per month. However, without considering the same, the Tribunal had erroneously fixed the notional income at Rs.10,000/- per month. Therefore, this Court is of the view that the notional monthly income of the deceased fixed by the Tribunal is very low and it is required to be modified. Applying the ratio laid down by the Hon'ble Apex Court, this Court feels it appropriate to fix notional monthly income at Rs.14,000/- per month and adding future prospects at 40%, the total income per month is quantified at Rs.19,600/- per month. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.13,066/- per month and the deceased was aged



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about 27 years at the time of accident as evidenced from the records, adopting the multiplier of 17 as fixed by the Apex Court, the loss of income to the family is arrived at Rs.13,066/- x12x17 = Rs.26,65,464/-, which is worked out as follows :-

<i>Loss of Income</i>	<i>Amount in Rs.</i>
Notional income (Per month)	14,000
Add: Future Prospects (Rs.14,000 x 40%) (Per month)	5,600
	19,600
Less: Personal expenses (1/3 rd) (Rs.19,600/- x 1/3) (Per month)	6,534
	13,066
Notional income (per annum) (Rs.13,066/- x 12)	1,56,792
Multiplier	17
Total	26,65,464

7. A sum of Rs.40,000/- has been granted to the first appellant under the head of "loss of consortium", which stands confirmed. The Tribunal has granted a sum of Rs.25,000/- under the head of "funeral expenses", which is excessive and the same is reduced to a sum of Rs.15,000/-. Further, a sum of Rs.20,000/- each has been awarded to the



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appellants 2 and 3 under the head of "loss of love and affection".

However, the wife/first appellant is entitled for "loss of consortium".

Though the Tribunal awarded Rs.20,000/- each under the head of "loss of love and affection", this Court is of the view that amount is meagre and required to be enhanced to a sum of Rs.40,000/- each. No amount has been granted under the head of "loss of estate" and "transportation". Therefore, a sum of Rs.15,000/- and 10,000/- respectively are awarded under the above heads.

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

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of Income	13,60,000/-	26,65,464/- (enhanced)
Loss of love and affection in respect of appellants 2 and 3	60,000/-	80,000/- (enhanced)
Loss of consortium to the 1 st appellant/wife	40,000/-	40,000/-
Funeral expenses	25,000/-	15,000/- (reduced)



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<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Transportation	Nil	10,000/-
Loss of estate	Nil	15,000/-
Total	14,85,000/-	28,25,464

9. Accordingly, the Appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.14,85,000/-** to **Rs.28,25,464/-**. The second respondent/Insurance Company is directed to deposit the said amount along with interest at 7.5% p.a., and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.539 of 2020 on the file of Special District Judge, Salem. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the respective bank accounts of the claimants, as per the proportion determined by the Tribunal, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the



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claimants or application for withdrawal from the claimant, whichever is later. The amount due to the minor shall be deposited in a Nationalized Bank. Till the minors attain majority, the quarterly interest can be withdrawn by the first appellant for the maintenance of the minors.

10. It is made clear that the claimants are not entitled for any interest for the delay period of 390 days. The appellants/claimants are directed to pay the necessary Court fee for the enhanced compensation amount. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the claimants. No costs.

04.01.2024

Index : Yes / No
NCC : Yes / No
jd

To

1. The Motor Accident Claims Tribunal,
Special District Judge,
Salem.

2. The Section Officer,



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V.R. Section,
High Court, Madras.

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Krishnan Ramasamy,J.,

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