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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.3063 of 2023

1. Selvi
2. Aravindhan ... Appellants/Petitioners

Vs.

1. Dr.R.Narendhar
2. The Manager,
   TATA AIG General Insurance Company Limited,
   2nd Floor, Samson Towers, 403-L,
   Pantheon Road, Egmore,
   Chennai 600 008. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the order and decree dated 24.03.2023, made in MCOP.No.1585 of 2017 on the file of learned Motor Accident Claims Tribunal, IInd Small Causes Court, Chennai.

For Appellants	:	Mr.R.Dinesh Kumar
For R1	:	S.V.Vijayprashanth, No appearance
For R2	:	Mr.J.Michael Visuvasam

JUDGEMENT

This Civil Miscellaneous Appeal has been filed by the appellants/claimants, challenging the quantum of the compensation awarded by the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai in

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M.C.O.P.No.1585 of 2017, dated 24.03.2023.

2. On 01.11.2016 at about 12.30 hours, when the deceased Ambalavanan, was riding a two wheeler bearing Reg.No.TN-01-D-2350, at that time a car, bearing Reg.No.TN-01-AS-0997, driven by its driver in a rash and negligent manner came from the same direction and dashed against the two-wheeler of the deceased. Due to the impact, the deceased sustained grievous injures all over his body and died. Thereafter, the appellants being the wife and son of the deceased made a claim petition before the Tribunal, seeking a sum Rs.30,00,000/- as compensation.

3. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.2,81,000/- towards compensation to the appellants. Being not satisfied with the same, the appellants have filed the present appeal.

4. The learned counsel for the appellants submitted that, even before the death of the deceased, due to the accident, the deceased had undergone treatment for a period of one month in Apollo Hospital and had incurred medical expenditure about Rs.14,63,441/-. The learned counsel urged that, while awarding the compensation, the Tribunal has not considered the entire

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hospital bill produced by the appellants for treatment of the deceased. Further, he would submit that the entire bills were marked as Ex.P5, and the Insurance Policy of the deceased was marked as Ex.P18, and the employee of the Apollo Hospital, where the deceased took treatment was examined as PW3, who deposed that the appellants have received only a sum of Rs.2,00,000/- as reimbursement, and the balance amount of the Medical bills i.e., a sum of Rs.12,63,441/- has to be paid by the second respondent/Insurance Company. The main grievance of the appellants is that, when awarding the compensation, this aspects was not at all considered by the Tribunal. Further, he contended that, at the time of accident, the deceased was aged about 75 years, and he was a Veterinary Doctor, and earning Rs.40,000/- per month. Ignoring the same, the Tribunal has taken the notional monthly income of the deceased at Rs.20,000/- which is very meager, and the same needs to be re-considered by this Court. Accordingly, he prayed for appropriate enhancement in favour of the appellants.

5. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, in the absence of proof for the income of the deceased, the Tribunal has taken a sum of Rs.20,000/- as his monthly income, which is just and fair. Further, he would submit that, if any issue is raised with regard to re-determination of the compensation amount, this

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Court is empowered to re-visit the notional income fixed by the Tribunal and also to reduce the same. Further, he fairly admitted that, as far as the medical bills are concerned, this Court may consider the said aspect and may pass appropriate orders.

6. 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.

7. The fact and manner of the accident and also the liability are not disputed by the parties. Therefore, this Court is not dealing with the said aspect. In the present case, due to the accident, the deceased had undergone treatment for more than one month in the Apollo Hospital. On a perusal of the evidence of PW3, who is working in Apollo Hospital and the Medical Insurance Policy report, which was marked as Ex.P18, it is clear that the deceased was admitted in Apollo Hospital and about Rs.14,63,441/- was incurred as medical expenditure for treatment and only a sum of Rs.2,00,000/- has been reimbursed through the Medical Insurance Policy. In view of the above, this Court finds that the Tribunal ought to have considered the remaining amount of **Rs.12,63,441/-** under the head of "Medical expenses". Therefore, this Court is inclined to

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award a sum of **Rs.12,63,441/-** under the head of "medical expenses".

8. As far as the loss of dependency is concerned, the accident took place in the year of 2016, and at that point of time, the deceased was aged about 75 years. The Tribunal had fixed the notional monthly income of the deceased as Rs.20,000/- which is just and reasonable. Thus, by fixing a notional monthly income of the deceased at Rs.20,000/- per month; deducting 50% towards his personal and living expenses of the deceased (since the dependent is 1 i.e., his wife) and adopting the right multiplier of '5' (since the deceased was aged about 75 years), the compensation towards "Loss of Dependency" is calculated as under:-

Loss of Income	***Amount in Rs.***
Notional income (Per month)	20,000
Less: Personal expenses (50%) (Rs.20,000/- x 1/2) (Per month)	10,000
Notional income (per annum) (Rs.10,000/- x 12)	1,20,000
Multiplier	5
Total	**6,00,000/-**

9. Consequently, the sum of **Rs.1,60,000/-** awarded by the Tribunal under the head of 'Loss of Dependency' is hereby modified and enhanced to a sum of **Rs.6,00,000/-**.

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

11. As far as the liability aspect is concerned, the pay and recovery ordered by the Tribunal, stands confirmed.

12. Thus, the compensation awarded by the Tribunal is modified as under:-

Heads	***Awarded by the Tribunal (Amount in Rs.)***	***Awarded by this Court (Amount in Rs.)***
Loss of dependency	**1,60,000/-**	**6,00,000/-**
Loss of consortium	88,000/-	88,000/-
Loss of estate	16,500/-	16,500/-
Funeral expenses	16,500/-	16,500/-
Medical expenses	**Nil**	**12,63,441/-**
Total	**2,81,000/-**	**19,84,441/-**

13. Consequently, the total compensation amount of **Rs.2,81,000/-** awarded by the Tribunal is hereby modified and enhanced to **Rs.19,84,441/-**, 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 wife of the deceased is entitled to a sum of Rs.15,00,000/- together with proportionate

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interest; the second appellant, son of the deceased is entitled to a sum of Rs.4,84,441/- together with proportionate interest.

14. 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 along with interest at the rate of 7.5 % p.a., from the date of claim petition till the date of deposit 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 second respondent/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) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any.

v) There shall be no order as to costs.

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Index : Yes / No
NCC : Yes / No
jd

To

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

Krishnan Ramasamy,J.,
jd

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