

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.669 of 2024

1. Tmt.Parvathi
2. Nagalakshmi
3. Minor. Arul Kumar

... Appellants

Vs.

1. Vahwat Computers,
No.13, Narasingapuram Street,
Rajendran Complex, Shop No.6 & 7,
Chennai 600 002.

2. Reliance General Insurance Co. Ltd.,
No.6, 4th Floor, Haddows Road,
Nungambakkam, Chennai 6.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the award dated 22.02.2023 passed in M.C.O.P.749 of 2018 by the learned Motor Accident Claims Tribunal, Small Causes Court III, Chennai.

For Appellants : Mr.R.Dineshkumar

For R2 : Mr.P.Suresh Srinivasan

JUDGEMENT

This Civil Miscellaneous Appeal has been filed by the appellants/claimants, challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Small Causes Court III, Chennai in M.C.O.P.No.749 of 2018, dated 22.02.2023.

2. On 02.11.2017 at about 07.15 p.m., when the deceased was riding a bicycle proceeding opposite to Arul Mighu Prasanna Vinayagar Koil Street, Kilpauk Garden Road, Chennai, at that time, a motorcycle bearing Reg.No.TN-01-AZ-8457 proceeding from the same direction in a rash and negligent manner and dashed against the deceased, due to which, the deceased sustained grievous injuries all over his body and died. Hence, the appellants, being wife, son and daughter of the deceased, filed a Claim Petition before the Tribunal seeking a sum of Rs. 50,00,000/- as compensation.

3. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.18,40,000/- 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 would submit that, at the time of accident, the deceased was aged about 47 years, was working as Cooking master and earning a sum of Rs.20,000/- per month. In order to prove the same, the PW1 also stated in her evidence that the deceased was drawing a monthly income at Rs.20,000/-. However, without considering the same, the Tribunal had fixed the notional monthly income of the deceased at Rs.13,000/-, which appears to be low. Hence, the learned counsel requested this Court to re-determine the notional income of the deceased at Rs.15,000/- per month, which is just and reasonable. Accordingly, he prays for appropriate enhancement in favour of the appellants.

5. Per contra, the learned counsel for the second respondent would submit, that on relying upon the judgment of Hon'ble Division Bench of this Court in the case of *Andal vs. Avinav Kannan and another reported in 2019 (1) TNMAC 54, (Madras)*, based on the Cost of Living Index, the notional income of the deceased would come around Rs.13,705/-. Hence, he requested this Court to fix the notional income of the deceased as per the decision of *Andal's* case cited supra.

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 the manner of the accident is not disputed by the parties, as also the liability and the direction to pay the compensation by the second respondent at the first instance and recover the same from the first respondent. Since nobody has challenged the said finding of the Tribunal, the pay and recovery ordered by the Tribunal is confirmed. Therefore, this Court is not dealing with the said aspect.

8. 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 about 47 years, and had earned a sum of Rs.20,000/- per month as a Cooking master, without considering the same, the Tribunal had fixed the notional income of the deceased at a sum of Rs.13,000/-, which is on the lower side. In view of the above and applying the ratio laid down by the Hon'ble Division Bench of this Court in the case of *Andal* cited supra, this Court is inclined to re-determine the notional income of the deceased at Rs.14,000/- per month, which is just and reasonable. Thus, by fixing the notional income of the deceased at Rs.14,000/-; adding future

prospects at 25%, as has been held by the Constitution Bench of the Apex Court, the total income per month is quantified at Rs.17,500/-; deducting 1/3rd towards his personal and living expenses of the deceased; and adopting the multiplier of '13' (since the deceased was aged about 47 years), the compensation towards “Loss of Dependency” is calculated as under:-

<i>Loss of Income</i>	<i>Amount in Rs.</i>
Notional income (Per month)	14,000
Add: Future Prospects (Rs.14,000 x 25%) (Per month)	3,500
	17,500
Less: Personal expenses (1/3 rd) (Rs.17,500/- x 1/3) (Per month)	5,833
	11,666
Notional income (per annum) (Rs.11,666/- x 12)	1,40,000
Multiplier	13
Total	18,20,000/-

9. Consequently, the sum of **Rs.16,90,000/-** awarded by the Tribunal under the head of “Loss of Dependency” is hereby modified and enhanced to **Rs.18,20,000/-**.

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

11. Thus, the total compensation payable to the appellants/claimants under various Heads is modified hereunder:-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Compensation towards loss of dependency	16,90,000/-	18,20,000/- (enhanced)
Funeral expenses	15,000/-	15,000/-
Loss of Estate	15,000/-	15,000/-
Loss of constorium	1,20,000/-	1,20,000/-
Total	18,40,000/-	19,70,000/-

12. Consequently, the total compensation amount of Rs.18,40,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.19,70,000/-, 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.11,70,000/-** together with proportionate interest; second appellant, the daughter of the deceased is entitled to a sum of **Rs.4,00,000/-** together with proportionate interest; third appellant, the son of the deceased being minor is entitled to a sum of **Rs.4,00,000/-**. As regards the award amount to be disbursed to the minor claimant, the third appellant is concerned, on deposit of the award amount being made by the second

respondent/Insurance Company, Tribunal shall transfer the entire award amount belonging to the minor, in his name, in any of the Nationalized Bank, in a cumulative interest bearing Account till the minor attains majority, or three years whichever is earlier, and thereafter, the Tribunal shall take steps to settle the award amount to the claimant in accordance with law.

13. 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., 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 1 & 2 respective bank accounts through RTGS within a period of three weeks thereon.

(iii) The appellants 1 & 2 are entitled to withdraw the entire award

amount, less the amount already withdrawn, if any, by making necessary application before the Tribunal.

iv) It is made clear that the appellants/claimants will not be entitled for any interest for the delay period of 148 days.

v) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any.

vi) There shall be no order as to costs.

25.03.2024

Index : Yes / No

NCC : Yes / No

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To

1. The Motor Accident Claims Tribunal,
Small Causes Court III, Chennai.

2. The Section Officer,
V.R. Section,
High Court, Madras.

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Krishnan Ramasamy,J.,

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