IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.368 of 2024

1.Ameena Bee
2.Minor Mohamed Najeem
[** Minor rep by mother/1st appellant]

...Appellant

Vs

1.K.Kamalraj
2.HDFC ERGO General Insurance Co. Ltd.,
RR Towers, II Floor,
No.94/95, TVK Industrial Estate,
Guindy, Chennai 32.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 15.02.2023 passed in MCOP.No.1615 of 2018 by the learned Motor Accident Claims Tribunal, Small Causes Court II, Chennai and enhance the award amount.

For Appellant : Mr.R.Dinesh Kumar

For Respondent : Mr.N.Somasundar for R2

JUDGMENT

This civil miscellaneous appeal has been filed challenging the judgment and decree dated 15.02.2023 passed in MCOP.No.1615 of 2018.

2. The learned counsel for the claimant would submit that on 26.01.2018, when the deceased Ismail was riding a Motorcycle bearing Registration No.TN-58-AP-8260 at Santhi Nikethan Colony, a car bearing Registration No.TN-02-AT-5956 came in a rash and negligent manner and dashed against him, due to which he was died. Considering all the aspects, the Tribunal had awarded the compensation in the following manner:

S.No	***Heads***	***Compensation (Rs.)***
1	Loss of Dependency	14,30,000
2	Loss of Consortium	80,000
3	Loss of Estate	15,000
4	Funeral Expenses	15,000
	Total	15,40,000

3. Further, he would submit that the accident was occurred in the year 2018 and for a long period of time till the accident, the deceased, who was aged about 49 years, was working as a meat cutter and earning a sum of Rs.25,000/- per month. However, without considering the same, the Tribunal had fixed the

notional income of the deceased as a sum of Rs.11,000/- which is on the lower side. Hence, he requests this Court to enhance the same.

4. In reply, the learned counsel for the respondent would submit that considering the year of accident and age and avocation of the deceased, the Tribunal had rightly awarded the compensation and hence, he requests this Court to confirm the same.

5. Heard the learned counsel for the appellant and the respondents and also perused the documents available on records.

6. In the present case, there is no dispute with regard to the occurrence of accident and fastening of liability. The only issue involved in this appeal is with regard to the fixation of notional income of the deceased. The accident was occurred in the year 2018 and the deceased was working as a meat cutter for a long period of time. According to claimants, he was earning a sum of Rs.25,000/- per month, however, no proof was produced by the claimants in this regard. Further, it was submitted by the respondents that considering the age

factor, the Tribunal had reduced the notional income of the deceased while awarding compensation. However, this Court is of the view that the deceased was aged about 49 years and at this age, he must have a lot of experience in his avocation, which would increase his income. The said principle would apply up to the age of retirement, i.e., up to 60 years. However, in a case where the deceased person was aged more than 60 years, the notional income may be reduced for age factor. In such view of the matter, since the deceased was aged about 49 years, the Tribunal is not supposed to have reduced the notional income of the deceased for the age factor.

7. Therefore, by following the law laid down by the Hon'ble Apex Court in ***Syed Sadiq and others vs. Divisional Manager, United India*** reported in ***MANU/SC/0033/2014*** and by applying the cost inflation and also taking into consideration of the year of accident and age, avocation and experience of the deceased in that field, this Court is inclined to fix a sum of Rs.15,000/- as notional income of the deceased. Hence, by adding 25% towards future prospects, by applying 13 as multiplier and by deducting 1/3rd towards personal expenses of the deceased, the loss of income would be calculated as follows:

Rs.15,000/- (notional income) + Rs.3,750/- (25% future prospects) * 12 (months) * 13 (multiplier) * (2/3) (deduction towards personal expenses) = Rs.19,50,000/-

8. Further, it appears that a sum of Rs.80,000/- towards loss of consortium for the 1st appellant, hence, the same is reduced to a sum of Rs.40,000/-. That apart, it appears that no amount was awarded towards loss of Love and Affection for the 2nd appellant. Hence, this Court is inclined to award a sum of Rs.40,000/- towards loss of Love and Affection for the 2nd appellant.

9. Accordingly, the compensation awarded by the Tribunal is modified as follows:

S.No.	***Heads***	***Compensation awarded by Tribunal (Rs.)***	***Compensation awarded by this Court (Rs.)***
1	Loss of Dependency	14,30,000	19,50,000
2	Loss of Consortium	80,000	40,000
3	Loss of Love and Affection	Nil	40,000
4	Loss of Estate	15,000	15,000
5	Funeral Expenses	15,000	15,000
	Total	15,40,000	20,60,000

10. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.20,60,000/-. Accordingly, the award amount stands increased from a sum of Rs.15,40,000/- to Rs.20,60,000/-. In all other aspects, the award of the Tribunal stands confirmed. It is also made clear that the compensation will be awarded to the claimants in the following proportions:

i) Minor child of the deceased/2nd appellant – Rs.5,00,000/-
ii) Wife of the deceased/1st appellant – Rs.15,60,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the 2nd respondent is directed to deposit a sum of Rs.20,60,000/- along with interest and costs, less the amount already deposited and also less the interest for the waiver period, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.1615 of 2018 on the file of learned Motor Accident Claims Tribunal, Small Causes Court II, Chennai Upon such deposit, the share of the minor 2nd appellant is directed to be deposited in any one of the Nationalised Bank till he attains majority and the 1st appellant being the mother of the minor is permitted to withdraw the accrued interest once in three months for the welfare of the minor. Further, the Tribunal is directed to transfer the share of the 1st appellant to her bank account, as per

the proportion determined by this Court, by way of RTGS, within a period of three weeks from the date of receipt of the Bank details from the 1st appellant. No costs.

27.03.2024

Index: Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
nsa

KRISHNAN RAMASAMY,J.

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