IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2024

C O R A M

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

C.M.A.No.2336 of 2022

1.Vellaiyappan
2.Mani @ Maniammal ...Appellants

Vs

1.Thangaraj

2.Reliance General Insurance
Branch Office,
3rd Floor,
No.408,
Perundurai Road,
Erode-638 011 ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree made in MCOP.No.13 of 2011 dated 28.03.2016 on the file of the Motor Accident Claims Tribunal-cum-Special District Court, Salem.

For Appellant : Mr.J.Ramakrishnan
For Respondents : Mr.P.Suresh Srinivasan for R2

JUDGMENT

Seeking enhancement of the quantum of the compensation awarded by the Tribunal vide order dated 28.03.2016 in M.C.O.P.No.13 of 2011, the appellants have come forward with the present Appeal.

2. The brief facts of the case are that on 20.06.2010 at about 10.45 p.m., one Thiru Iruvel, who was the son of the appellants herein, was returning in a two wheeler bearing Regn.No.TN-30 AF 9228 as a pillion rider which was ridden by his friend one Mohanraj in a rash and negligent manner with terrible speed and hit against an electric lamp post laid on the left side of the road in front of Pillaiyar temple, as a result of which, the pillion rider sustained multiple fatal injuries all over his body and died. The appellants herein, being the parents of the deceased Iruvel, filed a petition claiming Rs.12,00,000/- as compensation.

3. On consideration of both oral and documentary evidence, the learned Tribunal has awarded the compensation under the following heads, viz.,

S.No	Particulars	Compensation (Rs.)
1	Loss towards dependency	6,48,000
2	Loss of love and affection	20000
3	Funeral expenses	25000
	Total	6,93,000

4. The learned counsel appearing for the appellants would submit that the accident had occurred on 20.06.2010 and at that time, the deceased was about 23 years and working as a Mason and earning a sum of Rs.12,000/- per month. However, the Tribunal, in the absence of any evidence regarding income of the deceased, has fixed his income at Rs.6,000/- per month notionally, which is very low and hence, he seeks hike in the notional income. He would further submit that the compensation awarded towards 'love and affection' is also too low and the same is also required to be re-determined and enhanced and also as no compensation has been awarded towards 'loss of estate, transportation' the learned counsel seeks to award just compensation under the said heads.

5. Per contra, the learned counsel for the second respondent would submit that insofar as the fixation of notional income is concerned, the Tribunal has fixed the notional income reasonably and hence, he strongly opposed for the re-fixation of notional income beyond Rs.6000/- p.m. for

the accident occurred in the year 2010. As regards the other heads under which, the compensation was not awarded by the Tribunal, the learned counsel would submit that in accordance with the law laid down by the Apex Court, the compensation may be awarded.

6. Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent and perused the entire materials available on record.

7. There is no dispute as regards the occurrence of the accident, fixing the negligence as well as fastening the liability. The only issue is with regard to determination of quantum of the compensation since the appellants sought for enhancement of the compensation. In the present case, the accident had occurred in the year 2010 and at that time, the deceased was 22 years. In the absence of the income proof, the Tribunal fixed the notional income of the deceased at Rs.6000/- per month, but no future prospects were added. However, the future prospects at 50% were rightly deducted while applying the multiplier method.

8. The Hon'ble Supreme Court, in the case of ***Syed Sadiq vs. United India Insurance Company,*** reported in ***2014(1) TNMAc 459 (SC),*** fixed the notional monthly income even in respect of a Vegetable Vendor at Rs.6500/-, who sustained injuries in the accident occurred in the year 2008 and now, by applying the multiplier based on cost inflation index, in the absence of any proof for income, it would come more than a sum of Rs.13,000/- and hence, this Court is of the view that the notional income of the deceased fixed at Rs.6000/- is too low and accordingly, this Court feels it appropriate to fix the notional income of the deceased at a sum of Rs.8,000/-. Thus, by adding 40% towards future prospects and by applying multiplier 18 (since the deceased was 22 years at the time of accident) and by deducting 50% towards personal expenses since he died as a bachelor, the compensation towards 'loss of dependency income' works out as under:

Rs.11,200/- (Rs.8000-notional income + Rs.3200-40% future prospects) x1/2x18x12=12,09,600/-

9. As rightly submitted by the learned counsel for the appellant, the compensation awarded towards 'loss of love and affection' at Rs.20,000/- granted by the Tribunal is low and as per the decision of the Hon'ble Apex

Court, the parents are entitled to Rs.40,000/- each towards love and affection and accordingly, the same stands enhanced to Rs.80,000/- from Rs.20,000/-. The Tribunal awarded an amount of Rs.25000/- towards funeral expenses, which appears to be on the higher side. The Hon'ble Apex Court in the case of *"Pranay Sethi"*, has determined the funeral expenses at Rs.15000/-. Accordingly, the same stands reduced to Rs.15,000/- from Rs.25,000/-. As regards 'loss of estate', the Tribunal has not awarded any compensation. Hence, this Court feels it appropriate to grant Rs.15,000/- towards 'loss of estate' Similarly, no amount has been awarded towards transportation. Therefore, the claimant is entitled to a sum of Rs.5000/- towards transportation.

10. Accordingly, the compensation awarded by the Tribunal is modified and enhanced as follows:

S.No.	***Particulars***	***Compensation awarded by the Tribunal (Rs.)***	***Compensation awarded by this Court (Rs.)***
1	Loss towards dependency	6,48,000/-	12,09,600
2	Love and affection	20,000/-	80000
3	Funeral expenses	25000	15000

S.No.	***Particulars***	***Compensation awarded by the Tribunal (Rs.)***	***Compensation awarded by this Court (Rs.)***
4	Loss of estate	Nil	15000
5	Transportation	Nil	5000
	Total	**6,93,000/-**	**13,24,600**

11. Accordingly, the compensation awarded by the Tribunal at Rs.6,93,000/- is enhanced to a sum of Rs.13,24,600/-. However, it is to be noted that the appellants have originally sought for compensation for a sum of Rs.12,00,000/- only. In the case of "***The National Insurance Company Limited VS Ramavath Papa, W/o. Lalu Naik*"*,** the Andhra Pradesh High Court has discussed the scope of Order XLI Rule 33 and the power of the High Court to enhance the award amount in accident cases appropriately. It has been held that there is no limitation or restriction for awarding just compensation, and if the Tribunal or Court considers that the claimant is entitled to more compensation than claimed, it may pass such an award and enhance the compensation at the appellate stage also. Therefore, in order to render substantial justice to the claimants/appellants and having regard to the decision of the Hon'ble Supreme Court cited supra and considering the fact that the Tribunal has granted the compensation, which is not just and

fair, this Court feels it appropriate to enhance the same and awarded Rs.13,24,600/- accordingly.

12. In the result, this Civil Miscellaneous Appeal is allowed and the respondent is directed to deposit a sum of Rs.13,24,600/- along with interest 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 MCOP.No.13 of 2011 on the file of the Motor Accident Claims Tribunal-cum- Special District Court, Salem. Further, the appellants shall pay necessary Court fee on the enhanced compensation. Thereafter, the Tribunal is directed to immediately transfer the entire amount to the bank accounts of the appellants by way of RTGS, within a period of 3 weeks from the date of deposit and from the date of receipt of the Bank details obtained from the appellants or application for withdrawal filed by them, whichever is earlier. No costs.

18.03.2024

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

The Motor Accident Claims Tribunal-
cum-Special District Court, Salem.

KRISHNAN RAMASAMY,J.

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C.M.A.No.2336 of 2022

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