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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No. 1162 of 2021

1. Sivankumar

2. Murugeshwari

... Appellants

Vs.

1. M/s.R.S. and Co.,
D.No.1, Railway Feeder Road,
Rajapalayam,
Virudhunagar District.

2. The Branch Manager,
Royal Sundaram General Insurance Company Limited,
ATP Tower, 12-A, 5th Floor,
Bye Pass Road,
Madurai – 625 010.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the Order and Decree made in M.C.O.P.No.294 of 2018 dated 14.09.2021 on the file of the Motor Accident Claims Tribunal/Principal District Court, Virudhunagar District at Srivilliputtur.

For Appellant : Mr.M.Thirunavukkarasu

For R-1 : No appearance

For R-2 : Mr.S.Srinivasa Raghavan



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JUDGEMENT

This appeal is filed by the claimants for enhancement against the Judgment and Decree, dated 14.09.2021 in M.C.O.P.No.294 of 2018 on the file of the Motor Accident Claims Tribunal/Principal District Court, Virudhunagar District at Srivilliputtur.

2. The 1st claimant is the father and the 2nd claimant is mother of the deceased. At the time of accident, the deceased was aged about 20 years and he was working as Painter. The contention of the claimants is that the Tribunal ought to have taken 18 as multiplier, since the deceased was below 25 years age, but the Tribunal has erroneously taken the multiplier as 16. Further the Tribunal ought to have taken the notional salary for painter as Rs.12,000/- for which the Learned Counsel appearing for the claimants had relied on the Judgment passed in ***C.M.A(MD)Nos.2274 of 2016 and its batch., in the case of Bharti AXA General Insurance Company Limited Vs. Ammayya, vide Judgment, dated 10.10.2018***, where the Hon'ble Division Bench of this Court has fixed monthly income for Painter as Rs.12,000/-. Further the Tribunal ought to have taken 40% for future prospects. If the multiplier is taken 18 and 40% future prospects is added then the monthly notional income would be Rs. 16,800/-. But the Tribunal has erred in fixing wrong multiplier, wrong notional



income and future prospects. Hence, the claimants have filed the present appeal for enhancement of the compensation.

3. After hearing the arguments this Court is of the considered opinion that the claimants have proved the age of the deceased, in such circumstances, the Tribunal ought to have taken 18% as multiplier. Following the judgement of the Hon'ble Division Bench this Court is inclined to increase the notional income as Rs.12,000/- along with future prospects of 40%.

Rs.12,000/- = Rs.4,800 = Rs.16,800 – Monthly income including 40%
future prospectus.

Rs.16,800 / 2 = Rs.8,400/- - Deducting 1/2 for Personal expenses

Rs.8,400 x 12 x 18 (Multiplier) = Rs.18,14,400/- (Loss of income)

4. The next contention of the claimants is that the parents of the deceased are entitled Rs.40,000/- each with an addition of inflation under loss of parental consortium. In the case of *Magma General Insurance Company*, the Hon'ble Supreme Court had held that the conventional head of consortium shall be granted rather than love and affection. Therefore, instead of love and affection the same amount shall be paid under loss of parental consortium and the amount shall be Rs.50,000/- each.



5. Likewise, for funeral expenses the Tribunal has fixed only Rs.10,000/-, but the claimants are entitled to Rs.15,000/-. Hence the claimants are entitled to enhancement as stated supra.

6. Accordingly, the claimants are entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	For Loss of Income	Rs.10,80,000/-	Rs.18,14,400/-	enhanced
2.	For Loss of parental consortium (Rs.50,000/- each)	Rs. 50,000/-	Rs. 1,00,000/-	enhanced
3.	For funeral expenses	Rs. 10,000/-	Rs. 15,000/-	enhanced
4.	for transport expenses	Rs. 10,000/-	Rs. 10,000/-	confirmed
Total		Rs. 11,50,000/-	Rs. 19,39,400/-	

with interest at 7.5% p.a., as awarded by the Tribunal, from the date of claim petition till the date of realization.

7. In view of the said modification, this Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.11,50,000/- granted in M.C.O.P.No.294 of 2018 by the learned Motor Accident Claims Tribunal/Principal District Judge, Virudhunagar District at Srivilliputtur, is



enhanced to Rs.19,39,400/-with 7.5% interest. The Learned Counsel appearing for the respondents submitted that already the award amount passed by the Tribunal has deposited. The Insurance Company is directed to deposit the enhanced award amount along with interest and costs, within a period of Four weeks from the date of receipt of a copy of the Order. On such deposit, the 1st claimant is permitted to withdraw a sum of Rs.9,00,000/- and the 2nd claimant is entitled to withdraw a sum of Rs.10,39,400/-as per Law. The claimants are directed to pay the balance Court fee. No costs.

11.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

KSA

To

1. The Motor Accident Claims Tribunal/Principal District Court,
Virudhunagar District at Srivilliputtur.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Order made in
C.M.A(MD)No.1162 of 2021

11.01.2024