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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2025

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.3052 of 2021

1. Sathya
2. Bakkiyam
3. Kannan ...Appellants

Vs.

1. P.Subin Prabhu
2. Shriram General Insurance Co.Ltd.,
   1st Floor, Ramachandran Street,
   Saravana Nagar, Seevaram,
   Perungudi, Chennai – 600 096. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded in M.C.O.P.No.1584 of 2017 dated 16.10.2020 on the file of the Motor Accident Claims Tribunal (Small Causes Court, Special Sub Court No.1), at Chennai.

For Appellants : M/s.K.Varadha Kamaraj
For Respondents : Mr.N.Somasundaar for R2
Not Ready in Notice [R1]

JUDGMENT

Challenging the judgment and decree dated 16.10.2020 passed in M.A.C.T.O.P.No.1584 of 2017 on the file of the Motor Accident Claims

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Tribunal (Small Causes Court, Special Sub Court No.1), at Chennai, the claimants have filed the above appeal seeking enhancement of compensation.

2. Though the notice was served on the first respondent, no one appeared on his behalf. Considering the period of pendency of the above appeal, the same is taken up for final disposal based on the materials available on record.

3. It is the case of the claimants that, on 12.10.2016 at about 13.20 hours, when the deceased namely Vinayagam, was travelling as a pillion rider in the motor cycle bearing Regn.No.TN-09-CD-8577, at that time a Car belonging to the first respondent bearing Regn.No.TN-05-AT-4146 driven by its driver in a rash and negligent manner had hit the deceased, due to which, the deceased sustained grievous injuries and died on the spot. Thereby, the appellants, who are the wife and parents of the deceased have filed a claim petition in MCOP.No.1584 of 2017 claiming a compensation of Rs.40,00,000/-.

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4. Before the Tribunal, the claimants examined two witnesses viz. P.W.1 and P.W.2 and marked Exhibits P.1 to P.8 and the respondents have neither marked any exhibits nor examined any witnesses. After trial, the Tribunal, on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the driver of the 1st respondent Car and awarded Rs.15,58,600/- towards compensation for the death of the deceased. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have come up with this appeal seeking enhancement of compensation.

5. Learned counsel for the appellants submitted that the above said accident happened solely due to the rash and negligent driving on the part of the driver of the 1st respondent Car and the accident is of the year 2016 and at the time of accident, the deceased was only aged about 34 years and was working as a Security and was earning not less than a sum of Rs.10,000/- per month, however, the tribunal had taken the notional income of the deceased as Rs.8,000/-, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of

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decisions and thereby, the same has to be interfered with. Further, the compensation awarded under other heads are also on the lower side and the same needs to be enhanced. Accordingly, he prayed for appropriate orders.

6. Per contra, the learned counsel appearing on behalf of the 2nd respondent-Insurance Company contended that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

7. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties and the parties have not raised any issue on the aspect of negligence and therefore, this Court is not venturing into the same.

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9. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2016 and at the time of accident, the deceased was aged about 34 years and was working as a Security, however, the Tribunal had fixed the notional monthly income at Rs.8,000/-, which is on the lower side. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459,*** and also considering the age of the deceased as also the claimants fixing a notional income of Rs.10,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** the income per month is quantified at Rs.14,000/- (Rs.10,000/- + Rs.4,000/-). Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.9,333/- per month (Rs.14,000/- - Rs.4,667/-) and the deceased being aged about 34 years, as evidenced from the records, adopting the multiplier of 16 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the

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loss of income to the family is arrived at Rs.9,333/- * 12 * 16 = Rs.17,91,936/-.

10. A sum of Rs.40,000/- has been granted to the first appellant under the head “loss of consortium” which is just and reasonable and the same does not require any interference. A sum of Rs.50,000/- has been granted under the head “loss of love and affection” to the appellants 2 and 3, which is very meagre, hence the same is enhanced to a sum of Rs.80,000/- (Rs.40,000 x 2) to appellants 2 and 3. Insofar as the compensation awarded under the other heads are concerned, this Court is of the view that the compensation awarded under said heads are just and reasonable and the same does not requires interference of this Court.

11. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

Heads	***Amount awarded by the Tribunal (Rs.)***	***Modified Award Amount (Rs.)***
Loss of dependency	**14,33,600/-**	**17,91,936/- (enhanced)**
Loss of consortium	40,000/-	40,000/-

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Heads	*Amount awarded by the Tribunal (Rs.)*	*Modified Award Amount (Rs.)*
Loss of love and affection	**50,000/-**	**80,000/- (enhanced)**
Loss of estate	15,000/-	15,000/-
Transport Charges	5,000/-	5,000/-
Funeral Expenses	15,000/-	15,000/-
Total	**15,58,600/-**	**19,46,936/-**

12. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.1584 of 2017 is modified by enhancing the compensation amount from Rs.15,58,600/- to **Rs.19,46,936/-**. The 2nd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No.1584 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. Out

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of the enhanced amount, the first appellant / wife of the deceased is entitled for a sum of **Rs.7,78,000/-**and the appellants 2 and 3 / parents of the deceased are entitled to a sum of **Rs.5,84,468/- each**, with proportionate interest and costs. No costs.

03.01.2025

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NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

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To:

1.Motor Accident Claims Tribunal (Small Causes Court, Special Sub Court No.1), at Chennai.

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

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