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C.M.A.No.2783 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2783 of 2022

1.Gowri

2.Minor Karthikeyan,

(Rep by Natural Guardian and next friend

Gowri/1st appellant herein)

... Appellants /Petitioners

Vs.

1. P. Senthil Kumar

2. The Divisional Manager,

United India Insurance Co., Ltd.,

No.13A, Nethaji Road,

Cuddalore.

3. The Managing Director,

Tamil Nadu State Transport Corporation,

Villupuram Division,

Villupuram.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 07.11.2014 made in M.C.O.P.No.334 of 2010 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tindivanam.

For Appellants : Mr.B.Kumaran
For M/s.M.Kalyani

For R1 : No appearance



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For R2 : Mr. J. Chandran
For R3 : Mr.C.R.Sureshkumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation against the award passed by the Tribunal in M.C.O.P.No.334 of 2010, dated 07.11.2014, on the file of the Motor Accident Claims Tribunal, Additional Subordinate Court, Tindivanam.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The claimants are the appellants herein. They are the dependents of one Elumalai, who died in the road accident taken place on 30.05.2009 at about 02.15 hours night towards Dindivanam near Melpettai pool on the Chennai to Trichy National Highways. He was a cleaner by profession. At the time of accident, he was travelling in the Goods vehicle belongs to the first respondent insured with the second respondent herein. The driver of the first respondent drove the goods vehicle and dashed on the parked bus belongs to the first respondent thereby, the claim petition was filed by the claimants against all the three respondents seeking a sum of Rs.7,00,000/- as



compensation by invoking Section 166 of the Motor Vehicles Act, 1988.

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4. The owner of the goods vehicle in which the deceased travelled has not contested the claim. The second respondent insurer of goods vehicle and Transport Corporation contested the claim.

5. After considering the pleadings and evidence placed on record, the Tribunal has accepted the case of the claimants and held that the driver of the first respondent's vehicle negligently driven the same and caused the accident and that the respondents 1 and 2 are liable to pay the compensation to the claimants. The Tribunal has also quantified the compensation and awarded a sum of Rs.6,25,000/- along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realisation.

6. Aggrieved over the quantum of compensation, the claimants have come forward with this appeal seeking enhancement of compensation. The Insurance Company has not come forward to file any appeal challenging the same.

7. The learned counsel for the appellants submitted that the notional income fixed by the Tribunal for awarding compensation is on the lower side and also the Tribunal has failed to award compensation under other heads



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and prays to enhance the compensation.

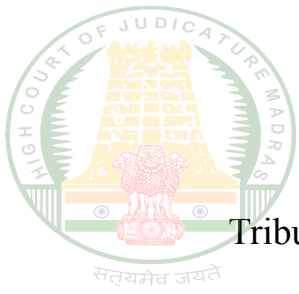
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8. The learned counsel for the second respondent /Insurance Company submitted that based on the norms followed by the Courts for fixing notional income, the Tribunal has rightly quantified the loss of income and also awarded compensation under various heads hence, there is no need for enhancement.

9. The learned counsel for the Transport Corporation has submitted that they are only a formal party and claim made against them has already been dismissed. The claimants have not challenged the same in this appeal.

10. I have considered the rival submissions made on both sides and also perused the records available.

11. Admittedly, the deceased Elumalai was travelled in the goods vehicle belongs to the first respondent as a cleaner. The respondents have also not adduced any evidence disputing the manner in which the accident alleged to be taken place. It is also accepted by the Tribunal that the deceased was working as a cleaner in the lorry. According to the claimants, the deceased was earning a sum of Rs.9,000/- per month whereas, the



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Tribunal after fixing the age of the deceased as 39 years, fixed the notional income as Rs.4,500/-, since there was no evidence placed on record to prove the income.

12. In the absence of any proof of income, this Court following the cost inflation to be the criteria for fixing the notional income and this was approved by the Hon'ble Apex Court in *Syed Sadiq vs. Union of India Limited Company [2014 (1) TN MAC 549]* and followed by the Division Bench Judgment of this Court in *Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]* and accordingly, considering the date of accident, I am inclined to fix the notional income at Rs.7,500/- per month. Considering the age of the deceased as 39 years at the time of accident, the Tribunal properly applied multiplier of '15' and future prospects 40% has to be awarded. The claimants herein are the wife and child hence after deducting 1/3rd income as his personal expenses, the loss of income arrives as follows:

Annual income (Rs.7,500/- x 12)	= Rs.90,000/-
Future prospects @ 40%	= Rs.36,000/-
Yearly income of the deceased	= Rs.1,26,000/-
Yearly contribution to his family (deduction of 1/3 @ Rs.42,000/-)	= Rs.84,000/-
Applicable Multiplier	= 15
Total compensation (84000 x 15)	= Rs.12,60,000/-



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= Rs.12,60,000/-

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13. The Tribunal has awarded a sum of Rs.30,000/- as loss of consortium to the first claimant and also awarded a sum of Rs.30,000/- under the head loss of love and affection to both the claimants. This Court is of the view the same needs modification and considering the year of accident, both the claimants are entitled to Rs.40,000/- each under the head loss of consortium. The loss of consortium includes loss of love and affection as per the Judgment of the Apex Court in ***United India Insurance Co., Limited vs. Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11 SCC 780]***. Accordingly, the compensation awarded under the head loss of love and affection is hereby cancelled.

14. The Tribunal has not awarded any compensation under the head loss of estate and this Court is inclined to award a sum of Rs.15,000/- under the head loss of estate. The Tribunal has awarded Rs.15,000/- under the head Funeral expenses and the same is hereby confirmed. Apart from that the Tribunal has awarded Rs.15,000/- under the head Transport to hospital and this Court is of the view the head transport to hospital includes the head funeral expenses and accordingly, the compensation awarded under the head transport expenses is hereby cancelled.



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15. Thus the compensation awarded by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of Love and Affection	Rs.30,000/-	---	Set aside
2.	Loss of Consortium	Rs.30,000/-	Rs.80,000/-	Enhanced
3.	Loss of Dependency	Rs.5,40,000/-	Rs.12,60,000/-	Enhanced
4.	Ambulance & Transport Expenses	Rs.10,000/-	---	Set aside
5.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
6.	Loss of Estate	---	Rs.15,000/-	Granted
	Total	Rs.6,25,000/-	Rs.13,70,000/-	Enhanced by Rs.1,15,000/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,25,000/- is hereby enhanced to Rs.13,70,000/- [Rupees Thirteen Lakhs and Seventy Thousand only] together with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit excluding the default period, if any. The first and second respondents are directed to deposit the award amount,



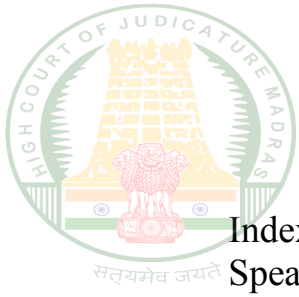
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now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.334 of 2010, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Tindivanam. On such deposit, the first claimant is permitted to withdraw the share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor appellant is directed to be deposited in any one of the Nationalized Bank till the minor claimant attains the age of majority. On such deposit, the first claimant being the mother of the minor claimant is permitted to take the interest once in three months for the welfare of the minor claimant, if he already attains the age of majority, his share amount may be disbursed. The Tribunal shall disburse the amount now awarded by this Court by directly crediting into the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

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To

- 1.The Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Tindivanam.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

K.RAJASEKAR,J.,

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