

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3193 of 2012

1. Nagarani

2. Selvam

3. Latha

4. Jothikala

5. Sathyaraj

...Appellants

vs.

1. S.P. Vineshkumar

2. The Oriental Insurance Co. Ltd.,
Branch Office:
No. 28, Salem Road,
Coonoor, The Nilgiris.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 17.08.2011 made in MCOP No.645 of 2010 on the file of MACT/ Sub Court at Sathyamangalam.

For Appellants : Mr. Lokesh

For Respondents : Mr. S. Arun Kumar
for R2.
R1- Exparte

JUDGMENT

This Appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 17.08.2011 passed by the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam in MCOP No. 645 of 2010.

2. The Appellants claimed to be the dependents of the deceased Ramachandran who died on 23.02.2010 as a result of an accident caused by a vehicle owned by the 1st respondent and insured with the 2nd respondent. The Appellants/ claimants unsatisfied with the quantum of compensation awarded by the Tribunal have preferred this Appeal seeking for enhancement.

3. The details of compensation awarded by the Tribunal to the Appellants/ claimants are as follows:

Heads	Amount awarded by Tribunal (in Rs.)
Loss of Income	2,88,000/- (4000 x 12 = 48000 – 1/3 = 32000 x 9)
Loss of Consortium to 1st Petitioner	10,000/-

Heads	Amount awarded by Tribunal (in Rs.)
Loss of love and affection	10,000/-
Funeral expenses	5,000/-
Transport expenses	2,000/-
Total	3,15,000/-

4. In the claim petition, the Appellants/claimants have pleaded that at the time of the accident, the deceased was a mason, aged 59 years and earning Rs.8,000/- per month. However, no documentary evidence was produced by the Appellants/ claimants to prove the avocation as well as the monthly income of the deceased. The Tribunal under the impugned Award fixed the notional monthly income of the deceased at Rs.4,000/-. The accident happened in the year 2010. This Court is of the considered view that if the year of the accident was taken into consideration, the Tribunal ought to have fixed the notional monthly income of the deceased at a higher sum. After giving due consideration to the year of the accident, this Court fixes the notional monthly income of the deceased at Rs.6,500/- instead of Rs.4,000/- erroneously fixed by the Tribunal.

5. The 1st Appellant is the 1st wife and the 2nd Appellant is the 2nd wife and the 3rd to 5th Appellants are the children of the deceased. The Tribunal has deducted 1/3rd towards personal expenses of the deceased

which is a correct assessment as the second Appellant who is the second wife of the deceased cannot legally claim to be a dependant of the deceased. Accordingly, the same is confirmed by this Court.

6. The Tribunal under the impugned award has erroneously failed to award any compensation towards loss of future prospects which the Appellants/ claimants are legally entitled to as per the settled law. Though the Appellants/claimants have claimed in the claim petition that the deceased was aged 59 years at the time of the accident, as per the postmortem report, the deceased was aged 60 years at the time of the accident. Since the deceased was aged 60 years and was a Mason at the time of accident, this Court fixes the loss of future prospects at 10%. Since the deceased was aged 60 years at the time of the accident, the Tribunal has rightly adopted 9 multiplier for assessing the loss of income payable to the Appellants/claimants and the same is confirmed by this Court. Since the notional monthly income of the deceased has been enhanced to Rs.6,500/- by this Court, the loss of income payable to the Appellants/ claimants is re-assessed by this Court at Rs.5,14,800/- (6,500 + 10% = 7150 x 12 x 9 – 1/3).

7. The Tribunal has awarded a compensation of Rs.10,000/- towards loss of consortium to the 1st Appellant alone who is the first wife of the deceased which in the considered view of this Court is low and is not in accordance with the settled law. Accordingly, this Court enhances the compensation towards loss of consortium to the 1st Appellant to Rs.40,000/- instead of Rs.10,000/- fixed by the Tribunal. Since the 2nd Appellant who is the 2nd wife, is not legally wedded wife of the deceased, she is not entitled for any compensation towards loss of consortium and the Tribunal has rightly not awarded the same to the 2nd Appellant/ 2nd wife of the deceased.

8. The Tribunal has awarded a compensation of Rs.10,000/- towards loss of love and affection to the children of the deceased which in the considered view of this Court is low. The Appellants 3 to 5 are the children of the deceased and each of them are entitled to Rs.40,000/- towards loss of love and affection as per the settled law. Accordingly, this Court enhances the compensation towards loss of love and affection to the children of the deceased to Rs.1,20,000/- calculated at Rs.40,000/- each.

9. The Tribunal has awarded a compensation of Rs.5,000/-

towards funeral expenses which in the considered view of this Court is low and is not in accordance with settled law. Accordingly, this Court awards a compensation of Rs.15,000/- towards funeral expenses of the deceased to the Appellants/ claimants.

10. The Tribunal has erroneously failed to award any compensation towards loss of estate which the Appellants/ claimants are legally entitled to. Accordingly, this Court awards a compensation of Rs.15,000/- towards loss of estate to the Appellants/ claimants.

11. Insofar as the compensation awarded by the Tribunal at Rs.2,000/- towards transportation is concerned, the Tribunal ought not to have awarded the same in view of the fact that being a fatal accident, the Appellants/ claimants are not legally entitled for any compensation towards transportation expenses. Accordingly, the same is set aside by this Court.

12. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced to Rs.7,04,800/- instead of Rs.3,15,000/- as detailed hereunder:

Heads	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
Loss of Income	2,88,000/-	5,14,800/- (6,500 x 12 x 9 - 1/3 + 10%) incl. loss of future prospects
Loss of Consortium to 1st Petitioner	10,000/-	40,000/-
Loss of love and affection	10,000/-	1,20,000/-
Funeral expenses	5,000/-	15,000/-
Transport expenses	2,000/-	----
Loss of estate	---	15,000/-
Total	3,15,000/-	7,04,800/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the award amount from Rs.3,15,000/- to Rs.7,04,800/- by this Court. The second respondent Insurance company is directed to deposit the amount awarded by this Court after deducting the amount already deposited if any, together with interest from the date of claim till the date of deposit and cost to the credit of MCOP.No.645 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the respective share of award amount lying to the credit of MCOP No.645 of 2010 to the bank account of the Appellants/claimants through RTGS as

per the ratio apportioned by the Tribunal within a period of one week thereafter. No Costs.

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ab/nl

Index: Yes/No

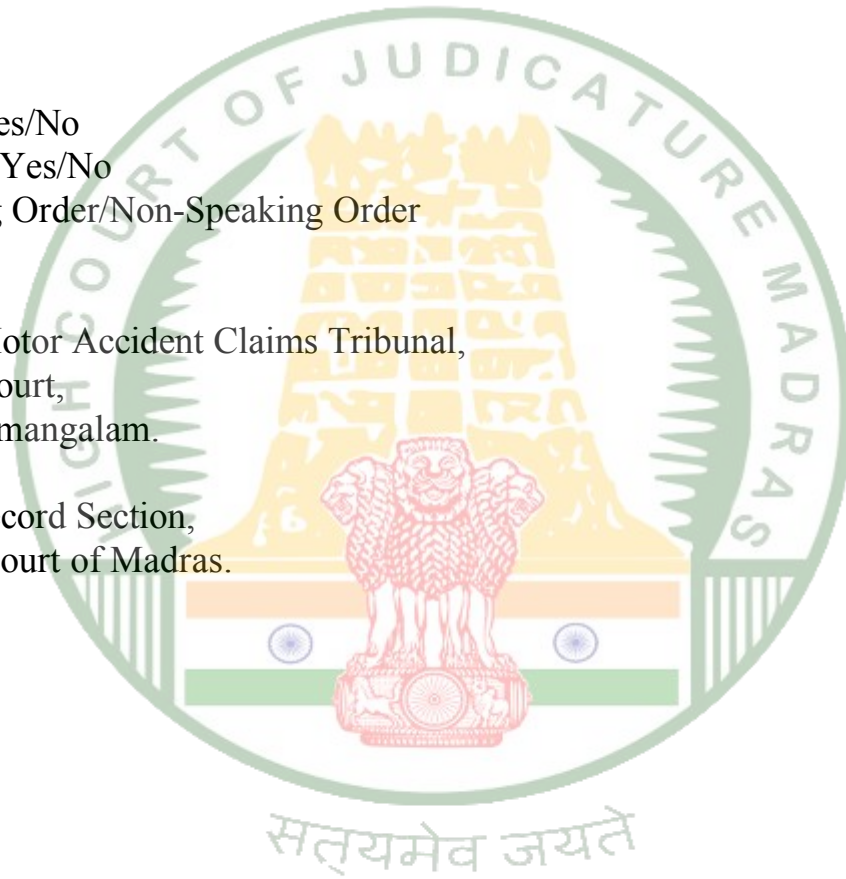
Internet: Yes/No

Speaking Order/Non-Speaking Order

To

The Motor Accident Claims Tribunal,
Sub Court,
Sathyamangalam.

2.The Record Section,
High Court of Madras.



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ABDUL QUDDHOSE, J.

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