

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED: 17.12.2021****CORAM:****THE HONOURABLE MRS. JUSTICE S. KANNAMMAL****C.M.A.No. 1314 of 2018**

1.Shankar
2.Surendar
3.Minor Akila

...Appellants**Versus**

1. Kuppusamy
2. The Managing Director,
The New India Assurance Company Limited,
No.69/70, Shekupet, Nadu Street,
Kancheepuram.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree in M.C.O.P.No. 133 of 2014 dated 25.07.2017 on the file of the Motor Accident Claims Tribunal, Madurantakam, Kancheepuram District.

For Appellants : Mr.P.Gopiraja
For R1 : No Appearance
For R2 : Mr.J.Michael Visuvasam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree dated 25.07.2017 passed by the learned Subordinate Judge [Motor Accidents Claims Tribunal], Madurantakam, Kancheepuram District in M.C.O.P. No. 133 of 2014.



2. By the impugned award, the Tribunal has awarded a sum of Rs.3,76,961/- as compensation together with interest at 9% per annum from the date of filing of the claim petition till the date of deposit to the first appellant for the death of his wife Vijayalakshmi, W/o.Shankar, and the children of the deceased the appellants 2 and 3.

3. This is a case of fatal accident. It is the case of the claimants that, on 12.05.2014 at 11.30 a.m., the deceased Vijayalakshmi was traveling as a pillion rider in a two wheeler bearing Registration No.TN-19-Y-2221 driven by her own brother, namely, Mageshkumar from Acharapakkam to Venkatesapuram, near Venkatesapuram Veeranakunnam Road in high speed and also in a rash and negligent manner and without seeing the big pit on the road, he applied sudden brake and was not able to control the vehicle. Due to his applying sudden brake, both Mageshkumar and the deceased Vijayalakshmi fell down from the Two Wheeler. As a result, the deceased sustained head injuries and was admitted in Adiparasakthi Medical College Hospital, Melmaruvathur and subsequently, the deceased was shifted to SRM Medical College and Research Central, Kattankolathur, for further treatment where she died on 18.05.2014. The husband of the deceased and her son and daughter filed the claim petition before the Tribunal. Though they claimed



together with interest at the rate of 9% per annum from the date of claim petition till the date of realization, under the following heads:-

<i>Heads</i>	<i>Rs.</i>
Loss of income 16 x 15,000/-	2,40,000/-
Loss of Consortium	50,000/-
Loss of Love and Affection	50,000/-
Transport Expenses	5,000/-
Damages to Cloth and Articles	2,000/-
Medical Expenses	29,961/-
Total	3,76,961/-

4. The learned counsel appearing for the appellants/claimants contended that, since the amount awarded by the Tribunal is meager in all the heads, the claimants are entitled for higher compensation. He further contended that, at the time of accident, the deceased was aged 37 years and she was hale and healthy. She was the sole bread winner in her family. He also contended that, the deceased Vijayalakshmi was doing textile business and she was earning a sum of Rs.10,000/- per month, whereas, the Tribunal, without considering the income of the deceased wrongly fixed a sum of Rs.15,000/- per annum as notional income. He further contended that the amounts awarded under the heads "loss of love and affection" and "loss of consortium" are very meager. Hence, the appellants/claimants seek for enhancement of compensation.



5. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company submitted that the impugned award and Decree of the Tribunal, is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

6. This Court carefully considered the rival submissions of the learned counsel for the appellants/claimants and the learned counsel appearing for the second respondent/Insurance Company and perused the materials available on record.

7. It is not in dispute that the deceased died in the road accident that had occurred on 12.05.2014. The finding of the Tribunal that the accident had occurred due to rash and negligent driving while applying sudden brake on seeing a big pit on the road is justified and hence, it need not be adverted to in this appeal.

8. According to the appellants/claimants, the deceased was earning a sum of Rs.10,000/- per month through textile business. However, the Tribunal has fixed the notional annual income of the deceased as Rs.15,000/-. The learned counsel for the Insurance Company contended that the appellants have



of the deceased and they have also failed to examine any independent witness to prove the monthly income of the deceased. The Tribunal fixed the income of the deceased as Rs.15,000/- per annum, which itself is on the higher side.

9. As contended by the learned counsel for the appellants/claimants, the Tribunal has awarded only meagre amounts under the head “loss of income”, "loss of love and affection" and "loss of consortium". The Tribunal, as per the decisions of the Supreme Court in the case of *The General Manager, Kerala State Road Transport Corporation v. Susamma Thomas and Others* reported in 1994 (2) SCC 176, *Sarla Verma and Others v. Delhi Transport Corporation* reported in 2009 (6) SCC 121 and *Lata Wadhwa and Others v. State of Bihar and Others* reported in 2001 (8) SCC 197 and as per Clause (6) of II Schedule to the Motor Vehicles Act, observed that notional income of a spouse is 1/3 of the income of the surviving spouse.

10. Though in this case, there is no evidence in respect of the monthly income of the deceased Vijayalakshmi, taking into consideration the facts and circumstances of the case, this Court fixes Rs.10,000/- as the monthly income of the deceased. The annual income of the deceased works out to Rs.1,20,000/- (Rs.10,000/- x 12 months). If 1/3rd is deducted towards personal expenses, the resultant amount works out to Rs.80,000/-



[Rs.1,20,000/- - (1/3rd of Rs.1,20,000/-)]. Proper multiplier to be adopted in this case is "15" and the loss of income thus works out to Rs.12,00,000/- (Rs.80,000/- x "15").

11. The medical expenses awarded by the Tribunal is hereby confirmed, as the same is just and fair, taking into consideration that the claimants have produced medical bills.

12. Taking into consideration the fact that the husband has lost his wife, it is just, fair and proper to award only Rs.40,000/-. Accordingly, the amount awarded by the Tribunal under the head "loss of consortium" at Rs.50,000/- is hereby reduced to Rs.40,000/-.

13. Further, taking into account the fact that the children namely the claimants 2 and 3 have lost their mother at their young age, this Court deems it fit and proper to award Rs.80,000/- under the head "loss of love and affection", instead of Rs.50,000/- awarded by the Tribunal. This amount, in the opinion of this Court, would meet the ends of justice. Accordingly, Rs.50,000/- awarded by the Tribunal under the head "loss of love and affection" at Rs.50,000/- is hereby enhanced to Rs.80,000/-.



WEB COPY 14. It is to be noted that the amount awarded by the Tribunal under the head "transport expenses" is very meagre and the same is hereby increased from Rs.5,000/- to Rs.15,000/-, considering the fact that the claimants would have taken the deceased to hospital and would have incurred expenses on that account.

15. In view of the fact that the Tribunal has not awarded any amount under the head "funeral expenses", this Court deems it fit and proper to award Rs.15,000/- under the head "funeral expenses" in as much as the claimants would have expended on the same.

16. It is also to be noted that the Tribunal has not awarded any amount under the head "loss of estate". Accordingly, this Court awards Rs.15,000/- under the head "loss of estate".

17. Further, it is to be noted that the Tribunal has awarded Rs.2,000/- under the head damages to clothes and articles, which is unwarranted, taking into consideration the facts and circumstances of the case. Accordingly, the amount awarded by the Tribunal under the head "damages to clothes and



18. The modified award is tabulated hereunder:-

Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of Income	Rs.2,40,000	Rs.12,00,000
2.	Loss of Consortium	Rs.50,000	Rs.40,000
3.	Loss of Love and Affection for two persons	Rs.50,000	Rs.80,000
4.	Transport Expenses	Rs.5,000	Rs.15,000
5.	Funeral Expenses	---	Rs.15,000
6.	Loss of Estate	---	Rs.15,000
7.	Damages to Clothe and Articles	Rs.2,000	---
8.	Medical Expenses	Rs.29,961	Rs.29,961
	Total	Rs.3,76,961	Rs.13,94,961

19. The compensation awarded by the Tribunal is hereby enhanced from Rs.3,76,961/- to Rs.13,94,961/- [Rupees Thirteen Lakhs Ninety Four Thousand Nine Hundred and Sixty One Only]. The rate of interest at 9% fixed by the Tribunal is hereby reduced to 7.5%, taking into consideration the prevailing Bank interest and also the cost of living, coupled with the consideration of facts and circumstances of the case on hand. The second respondent/Insurance Company is directed to deposit the above said award amount to the credit of M.C.O.P.No. 133 of 2014 on the file of the Motor Accident Claims Tribunal, Madurantakam, Kancheepuram District, 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 amounts if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first claimant/husband shall withdraw a sum of Rs.4,00,000/- as his share. The second claimant/son shall withdraw a sum of Rs.4,00,000/- and the remaining compensation amount is payable to the third claimant/minor daughter along with proportionate interest and costs as awarded by the Tribunal.

20. As far as the share of the minor claimant, namely, Akila is concerned, the same shall be deposited in any of the Nationalized Bank in the interest bearing Fixed Deposit, till she attains majority and the natural guardian of the minor, being the father/1st Appellant/Claimant is permitted to withdraw the accrued interest thereon once in three months. The Claimants are directed to pay necessary Court Fee, if any to be paid, on the enhanced compensation amount.

21. In the result, this appeal is partly allowed. There shall be no order as to costs in this appeal.

17.12.2021

Index : Yes / No

Speaking Order : Yes/ No

msm



S. KANNAMMAL. J

msm

To

1. The Sub Judge,
Motor Accident Claims Tribunal,
Madurantakam,
Kancheepuram District.
2. The Section Officer, V.R.Section,
High Court of Madras, Chennai-600 104.

C.M.A.No.1314 of 2018

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