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C.M.A.No.1328 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1328 of 2018
[video conferencing]

1.Kanagam

2.Prasanth

3.Minor Vinith

[Minor 3rd appellant represented by his next friend
/guardian mother Kanagam, 1st appellant herein]

4.Palaniammal

5.Karuppannan

... Appellants / Petitioners

Vs.

1.Paramasivam

(R1 remained ex parte before Tribunal.
Hence, notice to R1 dispensed with)

2.The New India Assurance Co., Ltd.,

CLAIMS HUB – Salem 2nd Floor,
Sedhu Krishna Trade Centre, 133/31-1, Trichy Main Road,
Guhai, Salem – 636 006.

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the



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Motor Vehicles Act, 1988, against the Judgment and Decree in M.A.C.T.O.P.No.1171 of 2016, dated 22.02.2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.T.S.Arthanareeswaran
For R1 : Ex-parte
For R2 : Mr.K.Thirunavukkarasu

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 22.02.2018 passed in M.A.C.T.O.P.No.1171 of 2016 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

2.The appellants are the claimants in M.C.O.P.No.1171 of 2016, on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem. The appellants have filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Mani, who died in the accident took place on 18.09.2015.

3.The Tribunal considering the pleadings, oral and documentary



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evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Santro XL Car bearing Reg.No.TN 30 M 8664 owned by the 1st respondent herein and directed the 2nd respondent / Insurance Company to pay a sum of Rs.23,42,803/- [Rupees Twenty Three Lakhs Forty Two Thousand Eight Hundred and Three only] as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present Civil Miscellaneous Appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants / claimants would submit that at the time of accident, the deceased was aged about 42 years, working in a Maligai Shop and was earning a sum of Rs.15,000/- per month. But, the Tribunal without giving valid reason fixed a sum of Rs.6,500/- per month as notional income of the deceased and the same is meagre. There are five dependants of the deceased and the Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased instead of deducting 1/4th. The Tribunal has not considered future prospects of the deceased and also the



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correct multiplier has not been adopted for calculating the loss of income of the deceased. The Tribunal has not awarded any amount towards transportation and loss of love and affection to the appellants 2 to 5 and the same may be awarded. The total compensation awarded by the Tribunal is very meagre and hence, the learned counsel prayed for enhancement of compensation.

6.Per Contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the compensation awarded by the Tribunal under various heads are not meagre. The appellants have not made out any case for enhancement of compensation and hence, the learned counsel prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials available on record.

8.From the materials available on record, it is seen that it is the contention of the appellants that the deceased was working in a Maligai Shop



and was earning a sum of Rs.15,000/- per month at the time of accident.

Except oral evidence, the appellants have not filed any material evidence to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.6,500/- as notional income of the deceased which is meagre for the accident occurred in the year 2015. A sum of Rs.10,000/- as claimed by the appellants is fixed by this Court as monthly income of the deceased. As per Ex.P2/postmortem certificate, the deceased was aged about 42 years at the time of accident. The Tribunal has not granted any amount towards future prospects. As per the judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others]**, the appellants are entitled for compensation towards future prospects at the rate of 25% of the notional income. The Tribunal erroneously applied multiplier '9'. As per the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 (SC) [Sarla Verma & others Vs. Delhi Transport Corporation & another]**, the correct multiplier applicable is '14'. There are five dependents of the deceased, the Tribunal erroneously deducted 1/3rd towards towards personal expenses of the deceased instead of deducting 1/4th.



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Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.15,75,000/- {Rs.12,500/- [(Rs.10,000/- + Rs.2,500/- (25% of Rs.10,000/-)] x 12 x 14 x 3/4}. The Tribunal failed to award any amount towards transportation. The appellants are entitled to a sum of Rs.15,000/- towards transportation. The Tribunal has also not awarded any amount towards loss of love and affection to the appellants 2 and 3 who are the children of the deceased and the appellants 4 and 5 who are the parents of the deceased. Hence, the appellants 2 to 5 are entitled to a sum of Rs.1,60,000/- (Rs.40,000/- each) towards loss of love and affection. The amounts awarded by the Tribunal towards funeral expenses, loss of estate, loss of consortium to the 1st appellant and medical expenses are just and reasonable and hence, the same are hereby confirmed.

9.It is well settled that the Tribunal and the Courts have to award “just compensation”. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. Thus, the compensation awarded by the Tribunal is modified as follows:



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Sl. No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed enhanced or granted
1.	Loss of income	Rs.5,14,836/-	Rs.15,75,000/-	Enhanced
2.	Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Loss of estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Loss of Consortium to the 1 st appellant	Rs.40,000/-	Rs.40,000/-	Confirmed
5.	Medical Expenses	Rs.17,57,967/-	Rs.17,57,967/-	Confirmed
6.	Transportation	---	Rs.15,000/-	Granted
7.	Loss of love and affection to the appellants 2 to 5.	---	Rs.1,60,000/-	Granted
	Total	Rs.23,42,803/-	Rs.35,77,967/- -	Enhanced by Rs.12,35,164/-

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.23,42,803/- is hereby enhanced



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to Rs.35,77,967/- [Rupees Thirty Five Lakhs Seventy Seven Thousand Nine

Hundred Sixty Seven only] together with interest at the rate of 7.5% per

annum from the date of petition till the date of deposit. The 2nd

respondent/Insurance Company is directed to deposit the award amount now

determined by this Court, along with interest and costs, less the amount if any

already deposited, within a period of six weeks from the date of receipt of a

copy of this judgment to the credit of M.A.C.T.O.P.No.1171 of 2016, on the

file of the Motor Accidents Claims Tribunal, Special District Court, Salem. On

such deposit, the appellants 1, 2, 4 & 5 are permitted to withdraw their

respective share of the award amount now determined by this Court, as per

the ratio of apportionment fixed by the Tribunal, along with proportionate

interest and costs, less the amount if any, already withdrawn by making

necessary applications before the Tribunal. The share of the minor 3rd

appellant is directed to be deposited in any one of the Nationalized Banks, till

the minor 3rd appellant attains majority. On such deposit, the 1st appellant,

being the mother of the minor 3rd appellant is permitted to withdraw the

accrued interest once in three months for the welfare of the minor 3rd

appellant. Since, this Court had enhanced the compensation, the



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appellants/claimants are directed to pay necessary court fee, if any, on the enhanced compensation awarded amount. In other respects, the amount awarded by the Tribunal shall stand confirmed. No costs.

13.12.2021

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Index : Yes / No

Internet : Yes/No

Speaking Order : Yes / No

To:

1.The Special District Judge,
Motor Accidents Claims Tribunal,
Salem.

2.The Section Officer,
VR Section,
High Court of Madras.

S.KANNAMMAL, J.

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