IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2021

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.Nos.3075 & 3076 of 2017

1.Ramachandran
2.Chinnammal
3.Vijayakumari ...Appellants/Claimants in C.M.A.No.3075 of 2017

1.Mahalakshmi
2.Nimya
3.Nirmal (Minor)
4.Nishanth (Minor)
(Appellants 3 and 4 rep by Mother and natural guardian 1st Appellant)
5.Chinnammal ...Appellants/Claimants in C.M.A.No.3076 of 2017

Vs

1.Govindan
(1st Respondent remained exparte hence notice may be dispensed with)

2.National Insurance Company Limited,
No.23, 100 Feet Road,
Gayathri Nagar,
Pondicheri-3. ... Respondents/Respondents both C.M.As

Prayer in C.M.A.No.3075 of 2017: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.06.2017 made in M.C.O.P.No.635 of 2015 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

Prayer in C.M.A.No.3076 of 2017: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.06.2017 made in M.C.O.P.No.658 of 2015 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

In Both C.M.As

For Appellants : Mr.S.Kamadevan

For R2 : Mrs.R.Sreevidhya

For R1 : Exparte

JUDGMENT

These Civil Miscellaneous Appeals have been filed against the judgment and decree dated 27.06.2017 made in M.C.O.P.No.635 & 658 of 2015 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

2.The appellants in both the appeals are the claimants in M.C.O.P.Nos.635 & 658 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur. The appellants in C.M.A.No.3075 of 2017 has filed M.C.O.P.No.635 of 2015, claiming a sum of Rs.30,00,000 as compensation for the death of Vijayakumar-pillion rider, in the accident took place on 27.01.2015. The appellants in C.M.A.No.3076 of 2017 has filed M.C.O.P.No.658 of 2015, claiming a sum of Rs.50,00,000 as compensation for the death of Senthil-rider of the motor cycle, in the accident took place on 27.01.2015.

3.The facts of the case is that, on 27.01.2015, at about 16.00 hours, while the deceased Senthil was proceedings in the Hero Honda Motor Cycle bearing Registration No. TN-46-D-4390 along with Vijayakumar towards Siruvachur, the Tata Safari bearing Registration No.TN-31-AL-2647 belonging to the 1st respondent insured with 2nd respondent was driven by its driver in a rash and negligent manner and dashed the motor cycle from the behind. Due to which, the rider and the pillion rider of the motor cycle thrown out, sustained grievous injury and died.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tata Safari belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.7,38,000/- to the claimants in M.C.O.P.No.635 of 2015 and a sum of Rs.11,87,800/- to the claimants in M.C.O.P.No.658 of 2015.

5.Not being satisfied with the compensation awarded by the Tribunal, both the appeals have been filed challenging the quantum of compensation. The Court below fixed the entire liability against the respondents and there is no dispute on the aspect of liability.

6.The learned counsel for the appellants submitted that the Court below fixed the notional income of the deceased in both the appeals as Rs.6,000/-p.m. The accident was occurred on 27.01.2015. Therefore, he fairly submitted that the Court below ought to have fixed a sum of Rs.15,000/- as notional income. Even for the accident took place in the year 2008, the Hon'ble Supreme Court in the case of Syed Sadiq vs. Divisional Manager, United India Insurance reported in 2014 1 TNMAC 459 (SC) awarded a sum of Rs.6,500/- for the vegetable vendor. Therefore, considering the cost of living a sum of Rs.15,000/- would be fair amount to fix as a notional income for the deceased in both the cases.

7.Further, he fairly submitted that the compensation awarded under other heads shall be refixed as per the principle laid down in the case of National Ins. Co. vs. Pranay Sethi & others reported in 2017 (2) TNMAC 609 (SC).

8.The learned counsel for the 2nd respondent submitted that as per the principle laid down in the Syed Sadiq case stated supra, fixing a sum of Rs.15,000/- as notional income would be on the higher side and therefore, he submitted that lesser amount may be fixed as notional income of the deceased in both the cases.

9.In C.M.A.No.3075 of 2017, the deceased was aged about 24 years, and he was bachelor. In C.M.A.No.3076 of 2017, the deceased was aged about 43 years at the time of accident. He left his Wife, two children and parents. In Syed Sadiq case stated supra, the notional income was taken as Rs.6,500/- considering the year of accident and the cost of living. By applying the same yardstick, in the present case, the accident is of the year 2015, this Court is inclined to refix the notional income as a sum of Rs.12,000/-, which would be fair for both the appeals. Therefore, loss of income arrived as follows:

C.M.A.No.3075 of 2017

10.In C.M.A.3075 of 2017, the age of the deceased was 24 years. The Court below has correctly applied the multiplier 18. The deceased was bachelor, therefore the Tribunal deducted half of the income towards personal expense and added 40% towards future prospect, which is just and proper. Hence, the loss of earning awarded by the Tribunal is modified as follows:

Rs.12,000/- + 4,800 (40% of Rs.12,000) x 12 x 18 x 1/2 = Rs.18,14,400/-

11.The Tribunal has awarded a sum of Rs.60,000/- under the head of loss of love and affection and the same is re-fixed as Rs.40,000/- each to appellants 1 to 3. The Tribunal has awarded a sum of Rs.5,000/- towards loss of estate and the same is very meagre. Therefore, this Court re-fix at a sum of Rs.15,000/- towards loss of estate. A sum of Rs.25,000/- awarded by the Tribunal towards funeral expense and transportation stands confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of Income	6,48,000	18,14,400
2.	Loss of love and affection for appellants 1 to 3	60,000	1,20,000
3.	Funeral Expenses & Transportation	25,000	25,000
3.	Loss of Estate	5,000	15,000
	Total	7,38,000	19,74,400

C.M.A.No.3076 of 2017

12.In the present case, the deceased was aged about 43 years. Therefore, 25% future prospect required to be added. The Tribunal has added 30% towards future prospect. Hence, the same is re-fixed as 25%. With regard to the multiplier and personal expense, the Tribunal applied the correct multiplier 14 and deducted 1/4th share towards personal expense. Hence, the loss of income awarded by the Tribunal is re-determined as follows:

Rs.12,000/- + 3,000 (25% of Rs.12,000) x 12 x 18 x 3/4 = Rs.18,90,00/-

13.The Tribunal has awarded a sum of Rs.75,000/- towards loss of consortium, which is on the higher side and the same is reduced as Rs.40,000/-. The Tribunal has awarded a sum of Rs.1,00,000/- under the head of loss of love and affection and the same is re-fixed as Rs.40,000/- each to appellants 2 to 5.The Tribunal has awarded a sum of Rs.5,000/- towards loss of estate and the same is very meagre. Therefore, this Court re-fix a sum of Rs.15,000/- towards loss of estate. A sum of Rs.25,000/- awarded by the Tribunal towards funeral expense and transportation stands confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of Income	9,82,800	18,90,000

2.	Loss of love and affection for appellants 2 to 5	1,00,000	1,60,000
3.	Loss of Consortium	75,000	40,000
4.	Funeral Expenses & Transportation	25,000	25,000
5.	Loss of Estate	5,000	15,000
	Total	11,87,800	21,30,000

14.In the result, this C.M.A.No.3075 of 2017 is partly allowed and the compensation awarded by the Tribunal in M.C.O.P.No.635 of 2015 at Rs.7,38,000/- is hereby enhanced to Rs.19,74,400/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of ten weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1 and 2 is permitted to withdraw a sum of Rs.7,50,000/-, each and the 3rd appellant is permitted to withdraw a sum of Rs.4,74,400/- of the award amount, along with interest and costs, less the amount if any, already withdrawn. The Tribunal is directed to transfer the respective share of the appellants/claimants by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained for the claimant or application made by the appellants/claimants for withdrawal, whichever is later.

15.C.M.A.No.3076 of 2017 is partly allowed and the compensation awarded by the Tribunal in M.C.O.P.No.658 of 2015 at Rs.11,87,800/- is hereby enhanced to Rs.21,30,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of ten weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st appellant is permitted to withdraw a sum of Rs.10,00,000/-, the appellants 2 to 4 is permitted to withdraw a sum of Rs.3,00,000/- each and the 5th appellant is permitted to withdraw a sum of Rs.2,30,000/- of the award amount, along with interest and costs, less the amount if any, already withdrawn. The Tribunal is directed to transfer the respective share of the appellants/claimants by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained for the claimant or application made by the appellants/claimants for withdrawal, whichever is later. No costs.

Sd/-

Assistant Registrar (SSA)

//True Copy//

Sub Assistant Registrar

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To:

1.The Motor Accident Claims Tribunal,
Principal District Judge, Perambalur.

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

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No.23162

C.M.A.Nos.3075 & 3076 of 2017

RK(CO)
GN(21/10/2021)