



WEB COPY

CMA No.2868 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.2868 of 2022

1. Sangeetha
2. Saraswathi
3. Ganesan

... Appellants

VS.

- 1.A.Jayagopal
2. M/s.Oriental Insurance Company Limited,
Divisional Office,
Salem – 636 004.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree, dated 31.01.2017 made in M.C.O.P.No.1604 of 2015 on the file of Motor Accidents Claims Tribunal (I Additional District Judge), Salem.

For Appellants	:	Mr.C.Prabakaran
For Respondents	:	Mrs.R.Sree Vidhya (for R2)

J U D G M E N T

Claim petitioners are the appellants herein seeking enhancement of compensation awarded in MCOP No.1604 of 2015, on the file on the Motor Accident Claims Tribunal (I Additional District Judge), Salem.



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2. For the sake of convenience, the parties are referred to as per their ranking before the Claims Tribunal.

3. The factum of the accident, manner of the accident and the rash and negligent driving on the part of the driver of the offending vehicle, are not disputed and hence, the same are hereby confirmed.

4. On the factum of enhancement of compensation, both the parties are heard and records are perused.

5. The date of accident is 31.05.2015. At the time of accident, the deceased was aged about 29 years and said to have been working in a private company and earning a sum of Rs.15,000/- per month. To substantiate the same, on the side of the claimants, Ex.P14-Conduct certificate issued by the Manager of Palani Aandavar Feeds, whereby it is certified that the deceased was earning a sum of Rs.10,000/- per month and his conduct is good, was marked. Further, Ex.P16-Attendance Certificate issued by the said company and Ex.P17, Statement of Accounts of the



deceased with Karur Vysya Bank, which shows that on 05.02.2015 a sum of Rs.9,600/- and on 05.03.2015, a sum of Rs.6,600/- were credited by the said company, were also marked.

6. On perusal of the above documentary evidence, the Claims tribunal fixed the monthly income of the deceased as Rs.9,600/- and as the deceased was not in a permanent job, has rejected the plea of 'future prospects'. But, as per the law laid down by our Hon'ble Apex Court in ***Santhosh Devi vs. National Insurance Company Ltd.***, reported in **2012 (6) SCC 421**, the claimants are entitled for 'future prospects'.

7. Accordingly, by adding 40% of the monthly income i.e. Rs.3,840/- [40% of Rs.9,600/-], towards future prospects, the notional monthly income of the deceased is arrived at Rs.13,440/-. Further, taking into consideration the number of dependants of the deceased i.e. '3', 1/3rd deduction is made and by applying multiplier '17', the loss of income sustained by the claimants/appellants-the legal representatives of the deceased, is reassessed as follows:

$$\text{Rs.13440/-} \times 12 \times 17 \times \frac{2}{3} = \text{Rs.18,27,840/-}$$



8. Perusal of the award shows that a meagre sum of Rs.5,000/- is awarded for funeral expenses and so also the sum of Rs.25,000/- each awarded to the claimants 2 and 3 /parents of the deceased, is very low. Therefore, the compensation awarded under the head 'Funeral Expenses' is enhanced to Rs.15,000/- and under the head, 'loss of love and affection', a sum of Rs.40,000/- each is awarded to the claimants 2 and 3/parents of the deceased. The sum of Rs.40,000/- awarded to the wife of the deceased towards loss of consortium is reasonable and the same is confirmed. Further, no compensation is awarded towards 'loss of estate' and therefore, this Court, awards a sum of Rs.15,000/- under the said head.

9. In view of the above, the compensation of Rs.14,00,600/- awarded by the Claims Tribunal, is enhanced to Rs.19,77,840/- as detailed hereunder

Loss of Income	: Rs.18,27,840/-
Loss of Consortium	: Rs. 40,000/-
Loss of love and affection (Rs.40,000/- each to Claimants 2 and 3)	: Rs. 80,000/-
Funeral Expenses	: Rs. 15,000/-
Loss of Estate	: <u>Rs. 15,000/-</u>
Total	: Rs.19,77,840/-

Amount awarded by the tribunal	: <u>Rs.14,00,600/-</u>
Amount now enhanced	: <u>Rs. 5,77,240/-</u>



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Out of the total compensation of Rs.19,77,840/-, the 1st claimant/wife of the deceased is entitled to a sum of Rs.12,00,000/- and the claimants 2 and 3/parents of the deceased are entitled to Rs.3,88,920/- each.

10. From the records, this Court finds that the Civil Miscellaneous Appeal has been filed with a delay of 1685 days and the said delay was condoned on condition that the claim petitioners are not entitled for any interest for the delay period. Accordingly, the enhanced amount of Rs.5,77,240/- shall carry an interest of 7.5% per annum, excluding the delay period, till the date of realisation.

11. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The 2nd respondent – Oriental Insurance Company Limited, Salem, is directed to deposit the enhanced award amount of Rs.5,77,240/- with proportionate accrued interest and costs to the credit of MCOP No.1604 of 2015 on the file of the MACT (I Additional District Judge), Salem, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants/legal representatives of the



deceased are permitted to withdraw their share as apportioned above, with proportionate accrued interest and costs, by making necessary applications.

23.12.2022

Index :Yes/No
Internet :Yes/No
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To

The Motor Accidents Claims Tribunal,
(I Additional District Judge), Salem.



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RMT.TEEKAA RAMAN, J.

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