IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.2066 of 2021

1.A.Amaravathi

A.Sivasankaran (died)

2.N.Manjuladevi

3.Kurunchimalar

4.Minor Sachindeva

(Minor/4th appellant represented by

mother and next friend Kurunchimalar) ... Appellants

Vs.

1.A.Sankar

2.DM, the New India Insurance Co. Ltd.
DO, 30 J.N.Road
Puducherry.

3.Rajaveni
4.DM, United India Insurance Co. Ltd.
DO 13A, Nethaji Road
Cuddalore – 607 001.

5.Shanmugam ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.09.2020 made in M.C.O.P.No.2531 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

For Appellants	:	Ms.Ramya V.Rao
For R2	:	Mr.R.Sivakumar
For R4	:	Mr.D.Bhaskaran

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 02.09.2020 made in M.C.O.P.No.2531 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

2.The appellants are the claimants in M.C.O.P.No.2531 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court, Cuddalore. They filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Azhagudurai, who died in the accident that took place on 11.06.2014.

3.The respondents 1 and 3 are the owners of Tavera car & bus and respondents 2 and 4 are insurer of the Tavera car & bus respectively. Pending Claim Petition, the 3rd respondent, owner of the bus died and her son Shanmugam was impleaded as 5th respondent.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the drivers of Tavera car as well as the bus belonging to the respondents 1 and 5 respectively and awarded a sum of Rs.50,000/- as compensation to the 1st appellant and directed both the 2nd respondent, being insurer of the Tavera car and 4th respondent, being insurer of the bus to pay the said amount equally.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellants contended that the deceased was a retired Head Master at the time of accident, he was drawing pension to the tune of Rs.19,937/- per month and also working as a Supervisor in Ramco Cements, Ariyalur and was earning a sum of Rs.20,000/- per month. The Tribunal ought to have considered that had the deceased been alive, he would have got the entire amount of pension. The appellants 1 and 2 are the wife and daughter of the deceased. One A.Sivasankaran, son of the deceased Azhagudurai, died pending Claim Petition. His wife and son are the appellants 3 and 4. Had the deceased been alive, he would have taken care of his daughter-in-law and grand son. The Tribunal awarded only a meagre sum of Rs.50,000/- as compensation to the 1st appellant. The Tribunal ought to have awarded compensation towards loss of dependency and loss of consortium to the 1st appellant. The amount awarded by the Tribunal is meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the respondents 2 and 4/Insurance Companies separately contended that the appellants have not filed any document to prove the income of the deceased. Even after the death of the deceased Azhagudurai, his wife the 1st respondent is receiving the family pension and there is no loss of income. The Tribunal after considering all the materials on record, awarded Rs.50,000/- as compensation, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondents 2 & 4 and perused the entire materials on record.

9.From the materials on record, it is seen that it is the case of the appellants that at the time of accident, the deceased was a retired Head Master and was drawing pension to the tune of Rs.19,937/- per month. To substantiate their case, the appellants have filed and marked Pension Payment Order as Ex.P36. The Tribunal has not granted any compensation towards loss of dependency holding that even after the death of the deceased Azhagudurai, his wife the 1st appellant is receiving family pension and hence, there is no loss of income, which is not correct. After the death of husband, the wife can receive only half of the pension. Though the appellants have contended that the deceased was also working as a Supervisor in Ramco

Cements, Ariyalur, at the time of accident and was earning a sum of Rs.20,000/- per month, they did not file any document to prove the same. Considering the fact that the deceased, who retired as Headmaster of the School, would have got some employment after retirement, earned income and accident is of the year 2014, it would be just and proper to fix a sum of Rs.9,000/- per month as notional income of the deceased. The deceased was aged 63 years at the time of accident. As per the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another),** the multiplier applicable is '7'. The 1st appellant is the wife, 2nd appellant is the married daughter, 3rd appellant is daughter-in-law and 4th appellant is the grand son of the deceased. According to the appellants, one A.Sivasankaran, son of the deceased Azhagudurai, died pending Claim Petition. His wife and son are the appellants 3 and 4. Had the deceased been alive, he would have taken care of his daughter-in-law and grand son and they are also dependants of the deceased. The respondents 2 and 4/Insurance Companies did not let in any oral and documentary evidence to show that the appellants 3 and 4 have independent income and they are not dependants of the deceased. In number of cases, it has been held that even married daughter is dependant of the deceased father. In view of the above, the finding of the Tribunal that the appellants 2 to 4 are not dependants of the deceased is erroneous. There are four dependants of the deceased and 1/4th has to be deducted towards personal expenses. By fixing Rs.9,000/- per month as notional income of the deceased, applying multiplier '7' and deducting $1/4^{th}$ towards personal expenses, Rs.5,67,000/- (Rs.9,000/- X 12 X 7 X 3/4) is awarded towards loss of dependancy. The Tribunal has not awarded any amount towards loss of consortium to the 1^{st} appellant and hence, a sum of Rs.40,000/- is awarded towards loss of consortium. A sum of Rs.15,000/- awarded by the Tribunal towards loss of love and affection is meagre and the same is hereby enhanced to Rs.80,000/-. The amounts awarded by the Tribunal towards funeral expenses, transportation and loss of estate are just and reasonable and hence, the same are hereby confirmed.

9(i). 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:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	-	5,67,000	Granted
2.	Loss of consortium to the 1st appellant	-	40,000	Granted
3.	Loss of love and affection	15,000	80,000 (Rs.40,000/- to 2nd appellant, Rs.20,000/- each to appellants 3 & 4)	Enhanced
4.	Funeral expenses	15,000	15,000	Confirmed
5.	Transportation	5,000	5,000	Confirmed
6.	Loss of estate	15,000	15,000	Confirmed
	Total	**50,000**	**7,22,000**	**Enhanced by Rs.6,72,000/-**

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.50,000/- is hereby enhanced to Rs.7,22,000/- (excluding the default period, if any) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st appellant, wife of the deceased, is entitled to Rs.4,22,000/-, appellants

2 to 4, daughter, daughter-in-law and grand son of the deceased are entitled to Rs.1,00,000/- each. Both the respondents 2 and 4 being insurer of the Tavera car and bus respectively are directed to deposit the award amount now determined by this Court equally, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1 to 3 are permitted to withdraw their respective share of the award amount now determined by this Court, along with proportionate interest and costs, less the amount if any, already withdrawn. The share amount of the minor/4th appellant is directed to be deposited in any one of the Nationalised Banks till he attains majority. The mother of the minor, the 3rd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. The appellants are directed to pay the necessary Court fee on the enhanced award amount, if any. No costs.

(V.M.V., J) (S.M., J)
27.09.2022
(1/2)

Index : Yes / No
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V.M.VELUMANI,J.
and
SUNDER MOHAN,J.

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To

1.The Special Subordinate Judge
Motor Accident Claims Tribunal
Cuddalore.

2.The Section Officer
VR Section
High Court
Madras.

C.M.A.No.2066 of 2021

27.09.2022
(1/2)