IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

C.M.A.Nos.1939 & 1940 of 2021

1.Srirangam
2.Kanniyappan
3.Minor Sowmiya
4.Minor Suganya
(Minors rep. By their mother Srirangam) .. Appellants in C.M.A.No.1939/2021

1.Revathi
2.Minor Sharshan
3.Minor Praveen
4.Kaliammal
(Minors rep. By their mother Revathi) .. Appellants in C.M.A.No.1940/2021

Vs.

1.A.M.Saravanan
(R1 remained exparte before the Tribunal.
Hence notice is dispensed with.)

2.United India Insurance Co. Ltd.,
No.134, Greams Road,
IV Floor, Anna Salai,
Chennai 600 006. .. Respondents in both appeals

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common judgment and decree dated 26.02.2020, made in M.C.O.P. Nos.6499 & 6562 of 2018, on the file of the Chief Judge, (Motor Accident Claims Tribunal) Small Causes Court, Chennai.

(In both the appeals)

For Appellants : Mrs.A.Subadra for Ms.M.Malar

For R2 : Mrs.R.Rathna Thara

COMMON JUDGMENT

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

These appeals have been filed for enhancement of compensation granted by the common award dated 26.02.2020, made in M.C.O.P. Nos.6499 & 6562 of 2018, on the file of the Chief Judge, (Motor Accident Claims Tribunal) Small Causes Court, Chennai.

2.Both the appeals arise out of the same accident and common award and hence, disposed of by this common judgment.

3.The appellants-claimants in both the appeals filed M.C.O.P. No.6499 & 6562 of 2018, on the file of the Chief Judge, (Motor Accident Claims Tribunal) Small Causes Court, Chennai, claiming a sum of Rs.60,00,000/- and Rs.80,00,000/- as compensation for the death of one Lavanya and Moorthi respectively, who died in the accident that took place on 30.09.2018.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Car owned by the 1st respondent and directed the 2nd respondent, as insurer of the offending vehicle, to pay a sum of Rs.16,75,000/- and Rs.26,75,400/- as compensation to the appellants 1 & 2 in C.M.A.No.1939 of 2021 and appellants 1 to 4 in C.M.A.No.1940 of 2021 respectively. The Tribunal dismissed the claim petition in M.C.O.P.No.6499 of 2018 as against the appellants 3 and 4.

5.Not being satisfied with the amounts awarded by the Tribunal in the common award dated 26.02.2020, made in M.C.O.P. Nos.6499 & 6562 of 2018, the appellants in both the appeals have come out with the present appeals.

6(i).The learned counsel appearing for the appellants in C.M.A.No.1939 of 2021 contended that at the time of accident, the deceased Lavanya was aged 19 years and was working as a Supervisor/Data Entry Operator at Sri Sai Supply at Singaperumal Koil and was earning a sum of Rs.20,000/- per month. The Tribunal, without considering the year of accident is 2018, erroneously fixed only a meagre sum of Rs.10,000/- per month as notional income of the deceased. The appellants were dependent on the deceased Lavanya and the Tribunal ought not to have deducted 50% towards her personal expenses. Adopting 100% of income as future prospectus, the Tribunal ought to have awarded more amount as compensation towards loss of dependency, funeral expenses and loss of love and affection. The Tribunal failed to award any amount towards loss of estate, loss of filial consortium, mental agony and damages. The Tribunal erred in not awarding compensation towards appellants 3 and 4, siblings of the deceased, who are also dependent on her. In any event, the total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation.

6(ii).The learned counsel appearing for the appellants in C.M.A.No.1940 of 2021 contended that at the time of accident, the deceased Moorthy was aged 30 years and was working as a Mechanic for Motor Vehicles and was earning a sum of Rs.35,000/- per month. The Tribunal, without considering the year of accident is 2018, erroneously fixed only a meagre sum of Rs.12,000/- per month as notional income of the deceased. The appellants were dependent on the deceased Moorthy and the Tribunal ought not to have deducted 1/4th towards his personal expenses. Adopting 100% of income as future prospectus, the Tribunal ought to have awarded more amount as compensation towards loss of dependency, funeral expenses, loss of consortium and loss of love and affection. The Tribunal failed to award any amount towards loss of estate, loss of filial consortium, mental agony and damages. In any event, the total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants in both the appeals did not file any document to prove the avocation and income of the deceased Lavanya and Moorthy. The Tribunal, in the absence of any documentary evidence to prove the avocation and income of the deceased Lavanya and Moorthy, fixed a sum of Rs.10,000/- and Rs.12,000/- per month as notional income of the deceased respectively, which are not meagre. The compensation awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of both the appeals.

8.Heard learned counsel appearing for the appellants in both the appeals as well as the 2nd respondent-Insurance Company and perused the entire materials available on record.

C.M.A.No.1939 of 2021

9.From the materials on record, it is seen that it is the contention of the appellants that at the time of accident, the deceased Lavanya was aged 19 years, working as a Supervisor/Data Entry Operator at Sri Sai Supply at Singaperumal Koil and was earning a sum of Rs.20,000/- per month. The appellants did not let in evidence or mark any document to prove the avocation and income of the deceased Lavanya. In the absence of any oral and documentary evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased. The same is meagre. The accident is of the year 2018. Considering the year of accident and nature of work done by the deceased, a sum of Rs.13,000/- per month is fixed as notional income of the deceased. The Tribunal erroneously granted 50% enhancement towards future prospects, but rightly deducted 50% towards personal expenses of the deceased and applying the multiplier '18', awarded compensation towards loss of dependency. As per the judgment of the Hon'ble Apex Court reported in

2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the appellants are entitled to only 40% enhancement towards future prospects. The deceased died as bachelor. Hence, fixing a sum of Rs.13,000/- per month as notional income of the deceased, granting 40% enhancement towards future prospects, deducting ½ towards personal expenses and applying the multiplier '18', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.19,65,600/- {[Rs.13,000/- + Rs.5,200/- (40% of Rs.13,000/-)] x 12 x 18 x ½}. The Tribunal has awarded only a sum of Rs.20,000/- each towards loss of love and affection to the appellants 1 and 2, who are the parents of the deceased. The same is meagre and hence, enhanced to Rs.40,000/- each. The Tribunal has not awarded any amount towards loss of estate. The appellants 1 and 2 are entitled to a sum of Rs.15,000/- towards loss of estate. The sum of Rs.15,000/- awarded by the Tribunal under the head, funeral expenses is just and reasonable and hence, the same is hereby 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)	Award confirmed or enhanced or granted
1.	Loss of dependency	16,20,000/-	19,65,600/-	Enhanced
2.	Loss of love and affection to appellants 1 and 2	40,000/-	80,000/-	Enhanced
3.	Loss of estate	-	15,000/-	Granted
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	**16,75,000/-**	**20,75,600/-**	**Enhanced by Rs.4,00,600/-**

The Tribunal, considering the fact that the appellants 3 and 4 are minor siblings of the deceased Lavanya, who are not the dependents of the deceased, rightly dismissed the claim petition as against the appellants 3 and 4. Hence, the appeal is also dismissed as against the appellants 3 and 4.

C.M.A.No.1940 of 2021

10.From the materials on record, it is seen that it is the contention of the appellants that at the time of accident, the deceased Moorthy was aged 30 years, working as a Mechanic and was earning a sum of Rs.35,000/- per month. They have marked a copy of National Trade Certificate as Ex.P10. The appellants have not examined any employer to prove that certificate. In the absence of any oral and documentary evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.12,000/- per month as notional income of the deceased. The same is meagre. The accident is of the year 2018. Considering the year of accident and nature of work done by the deceased, a sum of Rs.14,000/- per month is fixed as notional income of the deceased. The Tribunal has rightly granted 40% enhancement towards future prospects and following the judgment of the Hon'ble Apex Court reported in ***2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another],*** applied the correct multiplier '17'. There are four dependents of the deceased. The Tribunal considering the same, has rightly deducted $1/4^{th}$ towards personal expenses of the deceased. Hence, fixing a sum of Rs.14,000/- per month as notional income of the deceased, granting 40% enhancement towards future prospects, deducting $1/4^{th}$ towards personal expenses and applying the multiplier '17', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.29,98,800/- {[Rs.14,000/- + Rs.5,600/- (40% of Rs.14,000/-)] x 12 x 17 x 3/4}. The sum of Rs.60,000/- granted by the Tribunal towards loss of love and affection to the appellants 2 to 4 at the rate of Rs.15,000/- each and the same is meagre. The appellants 2 to 4 are entitled to a sum of Rs.40,000/- each towards loss of love and affection. Hence, the amount awarded by the Tribunal towards loss of love and affection is enhanced to Rs.1,20,000/-. The Tribunal has awarded a sum of Rs.30,000/- towards loss of consortium to the 1st appellant, wife of the deceased and the same is meagre. Following the judgment of the Hon'ble Apex Court reported in ***2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others],*** the amount awarded by the Tribunal towards loss of consortium is enhanced to Rs.40,000/-. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The sum of Rs.15,000/- awarded by the Tribunal under the head, funeral expenses is just and reasonable and hence, the same is hereby 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)**	**Award confirmed or enhanced or granted**
1.	Loss of dependency	25,70,400/-	29,98,800/-	Enhanced

2.	Loss of love and affection to appellants 2 to 4	60,000/-	1,20,000/-	Enhanced
3.	Loss of estate	-	15,000/-	Granted
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of consortium to 1st appellant	30,000/-	40,000/-	Enhanced
	Total	**26,75,400/-**	**31,88,800/-**	**Enhanced by Rs.5,13,400/-**

11.In the result,

(i) C.M.A.No.1939 of 2021 is partly allowed and the amount awarded by the Tribunal at Rs.16,75,000/- is enhanced to Rs.20,75,600/- 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, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.6499 of 2018. On such deposit, the appellants 1 and 2 are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the

Tribunal. The appeal is dismissed as against the appellants 3 and 4. The appellants 1 and 2 are directed to pay the necessary court fee on the enhanced award amount as per the order of this Court dated 07.07.2021 made in C.M.P.No.9723 of 2021 in C.M.A.SR.53513 of 2021. No costs.

(ii).C.M.A.No.1940 of 2021 is partly allowed and the amount awarded by the Tribunal at Rs.26,75,400/- is enhanced to Rs.31,88,800/- 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, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.6562 of 2018. On such deposit, the appellants 1 and 4 are permitted to withdraw their share of the award amount, now determined by this Court, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st appellant, mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. The appellants are directed to pay the necessary court fee on the enhanced award amount as per the order of this Court dated 07.07.2021 made in C.M.P.No.9725 of 2021 in C.M.A.SR.53514 of 2021. No costs.

(V.M.V., J) (S.S., J)
16.06.2022

gsa

To

1.The Chief Judge,
(Motor Accident Claims Tribunal)
Small Causes Court, Chennai.

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

V.M.VELUMANI,J.
and
S.SOUNTHAR,J.

(gsa)

C.M.A.Nos.1939 & 1940 of 2021

16.06.2022