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C.M.A.No.1998 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1998 of 2021

1. Kesavan

2. Vigneshkumar

3. Prabavathi

..

Appellants

Vs.

1. Perumal

2.The Divisional Manager,
United India Insurance Company Limited,
Third Party Claims Hub,
Katpadi Road, Vellore.

.. Respondents

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

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.03.2021, made in M.A.C.T.O.P.No.287 of 2018, on the file of the Motor Accident Claims Tribunal, III Additional District Court, Vellore @



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Tirupattur.

For Appellants : M/s. M.Malar

For R2 : Mr.P.Sankaranarayanan

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed by the appellants-claimants for enhancement of compensation granted by the Tribunal in the award dated 08.03.2021, made in M.A.C.T.O.P.No.287 of 2018, on the file of the Motor Accident Claims Tribunal, III Additional District Court, Vellore @ Tirupattur.

2.The appellants are the claimants in M.C.O.P.No.287 of 2018, on the file of the Motor Accident Claims Tribunal, III Additional District Court, Vellore @ Tirupattur. They filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Rajeswari, who died in the accident that took place on 19.05.2018.

3.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 Eicher Lorry belonging to the first respondent and directed the second respondent / insurer of the said vehicle to pay a sum of Rs.8,95,120/- as compensation to the appellants at the first instance and thereafter, recover the same from the first respondent.

4. Not being satisfied with the compensation awarded by the Tribunal, the appellants have come out with the present appeal.

5. The learned counsel appearing for the appellants contended that at the time of accident, the deceased was earning more than Rs.20,000/- per month as a President for Women's Group Scheme, besides doing seasonal work. But, the Tribunal has fixed only a meagre amount of Rs.5,500/- as monthly income of the deceased without considering the year of accident, cost of inflation index, number of dependents and other factors. That apart, the Tribunal ought to have granted 40% instead of granting 25% enhancement towards future prospects. Further, the Tribunal has not awarded any amount towards loss of expectation of life, transportation and loss of love and affection to the appellants 2 & 3.



Therefore, the learned counsel prayed for enhancement of compensation.

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6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants have not proved the income of the deceased. In the absence of any document, a sum of Rs.5,500/- per month fixed by the Tribunal as notional income of the deceased is excessive. The learned counsel further contended that the deceased was aged 40 years at the time of accident and the Tribunal considering the same, has rightly granted 25% enhancement towards future prospects. It is also contended that the Tribunal has awarded a sum of Rs.40,000/- towards loss of consortium and hence, there is no requirement to award compensation under the head 'loss of love and affection' to the appellants 2 and 3. Therefore, the learned counsel contended that the total compensation awarded by the Tribunal is not meagre and the appellants have not made out any case for enhancement of compensation and 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 on record.



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8. From the materials available on record, it is seen that it is the case of the appellants that at the time of accident, the deceased was aged 40 years and was earning a sum of Rs.20,000/- per month as a President for Women's Group Scheme and by doing seasonal work. However, the appellants have not filed any document to prove the income of the deceased. In the absence of any document with regard to income, the Tribunal fixed a sum of Rs.5,500/- per month as notional income of the deceased, which is very meager. Considering the year of accident, age and nature of work done by the deceased, the notional income fixed by the Tribunal is modified by enhancing the same to Rs.15,000/-. As far as the contention of the learned counsel appearing for the appellants that the Tribunal ought to have granted 40% enhancement towards future prospects is concerned, in the absence of any material to prove the age of the deceased, the Tribunal considering Ex.P2 / postmortem certificate fixed the age of the deceased as 40 years. Further, the Tribunal 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]** wherein, in para 59.4, it was held that "*In case the deceased was*



self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component." Accordingly, the Tribunal has rightly granted 25% enhancement towards future prospects. Regarding the multiplier, the Tribunal followed 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)** and rightly applied multiplier '15'. There are three dependents of the deceased and hence, the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased. Thus, by fixing Rs.15,000/- per month as notional income of the deceased, the amount awarded by the Tribunal towards loss of income is modified to Rs.22,50,000/- (Rs.15,000/- + 3750 (Rs.15,000/- X 25%) X 12 X 15 X 2/3). The Tribunal has not granted any amount towards parental consortium. The appellants 2 & 3, who are the son and daughter of the deceased, are entitled to a sum of Rs.40,000/- each towards parental



consortium.

The amounts awarded by the Tribunal under other

heads are just and reasonable and hence, the same are 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 Income	8,25,120/-	22,50,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of Estate	15,000/-	15,000/-	Confirmed
5.	Parental consortium to appellants 2 & 3	-	80,000/- (Rs.40,000/- each)	Granted
	Total	Rs.8,95,120/-	Rs.24,00,000/-	Enhanced by Rs.15,04,880/- -

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,95,120/- is hereby enhanced to Rs.24,00,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent insurance company is directed to deposit the compensation amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from



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the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.287 of 2018, on the file of the Motor Accident Claims Tribunal, III Additional District Court, Vellore @ Tirupattur, at the first instance and thereafter, recover the same from the first respondent / owner of the vehicle. On such deposit, the appellants are permitted to withdraw their respective share of the compensation 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. No costs. The appellants are directed to pay necessary Court fee on the enhanced award amount, if any.

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

10.11.2022

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Index : Yes / No

Internet : Yes / No

To

1. The III Additional District Court,
Motor Accidents Claims Tribunal,
Vellore @ Tirupattur.

2. The Section Officer,



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VR Section, High Court,
Madras.



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