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C.M.A. No.3441 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2022

CORAM:

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

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1.Mallika

2.Thilaka

3.Minor Deepa

4.Minor Rakesh

(Minors rep. By their mother Mallika,
as natural guardian and next friend)

5.Maheswari

.. Appellants

Vs.

1.V.Meena

(R1 remained exparte before the Tribunal.
Hence, notice may be dispensed with)

2.United India Insurance Co. Ltd.,

No.134, Greams Road,

IV Floor, Anna Salai,

Chennai 600 006.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor



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Vehicles Act, 1988, against the judgment and decree dated 11.03.2021, made in M.C.O.P. No.3233 of 2018, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal) Chennai.

For Appellants : Mr.A.G.F.Terry Chella Raja
for Ms.M.Malar

For R2 : Mr.R.Rajesh

J U D G M E N T

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

This appeal has been filed for enhancement of compensation granted by the award dated 11.03.2021, made in M.C.O.P. No.3233 of 2018, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal) Chennai.

2.The appellants-claimants filed M.C.O.P. No.3233 of 2018, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.75,00,000/- as compensation for the death of one Babu, who died in the accident that took place on 04.04.2018.



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3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by driver of the Motorcycle owned by the 1st respondent and directed the 2nd respondent, as insurer of the offending vehicle, to pay a sum of Rs.19,72,500/- as compensation to the appellants at the first instance and recover the same from the 1st respondent.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 11.03.2021, made in M.C.O.P. No.3233 of 2018, 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 aged 42 years and was working as a Mason and was earning a sum of Rs.30,000/- per month. The Tribunal, in the absence of any evidence by the 2nd respondent-Insurance Company to disprove the avocation and income of the deceased, fixed only a meagre sum of Rs.11,000/- per month as notional income of the deceased and awarded



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meagre amounts as compensation towards loss of dependency. The Tribunal failed to award any amount under the head of damages, loss of expectation of life, filial consortium and mental agony. The amounts awarded by the Tribunal towards loss of dependency, loss of love and affection, loss of estate, transport expenses, loss of consortium and funeral expenses are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants have not filed any document to prove the avocation and income of the deceased. The Tribunal, in the absence of any evidence to prove the avocation and income of the deceased, fixed a sum of Rs.11,000/- per month as notional income of the deceased, which is 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 the appeal.



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7. Heard learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8. From the materials on record, it is seen that it is the contention of the appellants that at the time of accident, the deceased was aged 42 years, working as a Mason and was earning a sum of Rs.30,000/- per month. 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.11,000/- per month as notional income of the deceased. The said amount 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, 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]** and 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]**, rightly granted 25%



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enhancement towards future prospects and applied the correct multiplier '14'.

There are five dependents of the deceased. Hence, deducting $\frac{1}{4}$ towards personal expenses of the deceased and fixing the monthly income of the deceased as Rs.14,000/-, the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.22,05,000/- {[Rs.14,000/- + Rs.3,500/- (25% of Rs.14,000/-)] x 12 x 14 x $\frac{3}{4}$ }. 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 dependency	17,32,500/-	22,05,000/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Transport expenses (Ambulance)	10,000/-	10,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection to appellants 2 to 5	1,60,000/-	1,60,000/-	Confirmed
6.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed



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	Total	19,72,500/-	24,45,000/-	Enhanced by Rs.4,72,500/-
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9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.19,72,500/- is enhanced to Rs.24,45,000/- 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.3233 of 2018 at the first instance and recover the same from the 1st respondent. On such deposit, the appellants 1, 2 and 5 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 share of the minor appellants 3 & 4 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 3 & 4 is permitted to withdraw the accrued



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interest, once in three months for the welfare of the minor appellants 3 & 4.

No costs.

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

10.06.2022

gsa

To

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

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



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

(gsa)

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