



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

Civil Miscellaneous Appeal No.3274 of 2014

1.Vasanth  
2.Kamatchi  
3.Indira Gandhi  
4.Kumar  
5.Usha

...Appellants/Petitioners

Vs.

1. Senthil Kumaran

2. The Divisional Manager  
The United India Insurance Company Limited  
Having its office at No.46,  
Katpadi Road, Vellore

...Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 30.07.2010 made in M.A.C.T.O.P.No.798 of 2006 on the file of Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

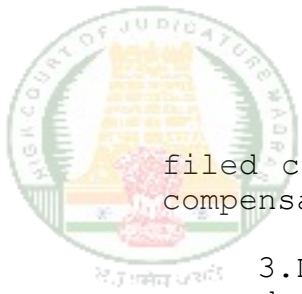
For Appellants : Ms.Subhadra for Ms.M.Malar

For respondents : Mr.M.Vijayaraghavan for R2.

#### JUDGMENT

This appeal has been filed by the appellants/claimants for enhancement of compensation. The Tribunal passed an award in favour of the appellants/claimants for a sum of Rs.1,93,000/- together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

2. The claimants are the wife and children of the deceased. The case of the claimants before the Tribunal is that on 28.08.2006, at 06.00 a.m, when the deceased Sadayakonar was walking on the road, 1<sup>st</sup> respondent's bus bearing Reg.No.TN-25-E-6067 driven by its driver in a rash and negligent manner, dashed against the deceased and he died on the spot. The claimants



filed claim petition in MCOP.No.798 of 2006 and claimed a total compensation of Rs.5,00,000/- from the respondents.

3.Denying the averments in the claim petition, the first and second respondents filed counter. According to the 1<sup>st</sup> respondent, the deceased who attempted to cross the road suddenly got himself involved in the accident. The 2<sup>nd</sup> respondent submitted that their liability is subject to strict proof of the age, income of the deceased and insurance cover, registration certificate, permit and valid driving license of the driver of the vehicle.

4.The Court below after considering the pleadings, oral and documentary evidence of both sides, awarded a sum of Rs.1,93,000/- under the following heads :

| S.No. | Particulars                     | Amount in Rs. |
|-------|---------------------------------|---------------|
| 1.    | Pecuniary loss                  | 1,50,000/-    |
| 2.    | Loss of love and affection      | 40,000/-      |
| 3.    | Funeral expenes                 | 2,000/-       |
| 4.    | Transportation charges          | 500/-         |
| 5.    | Damage to clothing and articles | 500/-         |
|       | Total                           | 1,93,000/-    |

Aggrieved over the same, the appellants/claimants have filed this appeal seeking enhancement of the compensation.

5. According to the learned counsel for the appellants, the deceased was an agriculturist and was also doing flower business and was earning Rs.6000/- per month. But the Tribunal fixed consolidated sum of Rs.1,50,000/- as pecuniary loss. Further the Tribunal erred in not awarding any amount on the head of future prospects and not adopted multiplier method and the award passed by the Tribunal is not a just and reasonable compensation. Hence, prays to enhance the compensation.

6.The learned counsel for the 2<sup>nd</sup> respondent-Insurance company would submit that the Tribunal after considering both the oral and documentary evidence of both sides has awarded just compensation and hence, the well considered award of the Court below needs no interference.

7.Heard the learned counsel for the appellants and the learned counsel for the second respondent and perused the materials available on record.

8.On a perusal of the materials available on record, it is



seen that the accident is of the year 2006. The Tribunal on considering the age of the deceased that is 60 years at the time of accident and that he is an agriculturist cooly, fixed a consolidated sum of Rs.1,50,000/- as pecuniary loss.

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9. According to the learned counsel for the appellants, the accident is of the year 2006 and during the relevant period, notional income was Rs.3000/- per month. In support of his contention, the learned counsel relied on the decision reported in 2018 (2) TN MAC 179 [Lawrence and others Vs. Anandakumar alias Nagendrakumar and others]. The learned counsel thus sought for fixing Rs.3000/- as notional income of the deceased and adopting proper multiplier and to add future prospects for arriving at a reasonable compensation under the head "Pecuniary Loss".

10. Taking note of the decision cited by the learned counsel for the appellants and also the facts of this case, this court feels it appropriate to fix Rs.3000/- as notional monthly income of the deceased. Further, following Sarla Verma's case, adopting 9 multiplier and further applying the judgment of the Hon'ble Supreme Court reported in 2017 (2) TNMAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], 10% of the income is added as future prospects to the notional income of the deceased and the pecuniary loss is arrived as below:-  
$$\text{Rs.3,000/-} + 10\% - \frac{1}{4} \times 12 \times 9 = \text{Rs.2,67,300/-}.$$

11. Insofar as the compensation granted under other heads are concerned, this court is of the view that the same are just and reasonable. Accordingly, the award passed by the Tribunal is modified as follows:-

| Sl. No. | Headings                        | Amount Awarded by the Tribunal Rs. | Amount awarded by this Court Rs. | Award confirmed or enhanced |
|---------|---------------------------------|------------------------------------|----------------------------------|-----------------------------|
| 1       | Pecuniary loss                  | 1,50,000/-                         | 2,67,300/-                       | enhanced                    |
| 2       | Loss of love and affection      | 40,000/-                           | 40,000/-                         | confirmed                   |
| 3       | Funeral expenses                | 2,000/-                            | 2,000/-                          | confirmed                   |
| 4       | Transportation charges          | 500/-                              | 500/-                            | confirmed                   |
| 5       | Damage to clothing and articles | 500/-                              | 500/-                            | confirmed                   |
|         | Total                           | 1,93,000/-                         | 3,10,300/-                       | enhanced                    |

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at



Rs.1,93,000/- is hereby enhanced to Rs.3,10,300/- (Rupees Three lakhs ten thousand three hundred only) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2<sup>nd</sup> respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the enhanced award amount along with interest and costs in the ratio of 75% : 25% in respect of 1<sup>st</sup> appellant and the appellants 2 to 5. No costs.

Sd/-  
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The District Judge,  
Motor Accident Claims Tribunal,  
Thiruvannamalai.

Copy To

The Section Officer,  
VR Section,  
High Court, Madras.

+1cc to M/s.M.Malar, Advocate, S.R.No.16616

C.M.A.No.3274 of 2014

RP(CO)  
RGA(27/04/2022)