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C.M.A.No.2319 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2319 of 2022

1. Kandhamani
2. Brundhadevi
3. Kamalesh
4. Pavayee
5. Marappagounder

.. Appellants

Vs.

1. Venkataraman
2. M/s. Reliance General Insurance Co. Ltd.,
Shri Lakshmi complex, 1st floor,
Omalur Main Road, Swornapuri,
Salem - 636004.

.. Respondents

(R1 remained exparte before Tribunal.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.09.2021, made in M.C.O.P.No.1605 of 2019, on the file of the Motor Accident Claims Tribunal and Special District Judge, Salem.



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For Appellants : Mr.K.Premnath
For R1 : No appearance
For R2 : Mrs.C.Bhuvanasundari

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 04.09.2021, made in M.C.O.P.No.1605 of 2019, on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

2.The appellants are the claimants in M.C.O.P.No.1605 of 2019, on the file of the Motor Accident Claims Tribunal, Special District Judge Salem. They filed the said claim petition claiming a sum of Rs.75,00,000/- as compensation for the death of one Subramani @ Subramaniyam, who died in the accident that took place on 20.05.2019.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent



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driving by the driver of the car belonging to the first respondent and directed the respondents to pay a sum of Rs.14,13,000/- as compensation to the appellants.

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.50,000/- per month as office assistant and hostel warden in S.S.M. Polytechnic College, Komarapalayam, besides doing agricultural work. But, the Tribunal has fixed only a meagre amount of Rs.12,000/- as monthly income of the deceased without considering the year of accident, Ex.X2-salary certificate and also the evidence of PW2-Lab Instructor of the educational institution, cost of inflation index, number of dependents and other factors. That apart, the Tribunal ought to have deducted $\frac{1}{4}^{\text{th}}$ instead of deducting $\frac{1}{3}^{\text{rd}}$, as there are 5 dependents. Further, the Tribunal has not granted any enhancement towards future prospectus and not awarded any amount for loss of estate. 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 did not file any document to prove the income of the deceased and hence, the Tribunal in the absence of any document with regard to income has rightly fixed a notional income of Rs.12,000/- per month. The learned counsel further contended that the deceased was aged 48 years at the time of accident and the Tribunal considering the same, has rightly deducted 1/3rd towards personal expenses of the deceased. It is also contended that the Tribunal has awarded a sum of Rs.40,000/- towards loss of consortium and Rs.1,00,000/- towards love and affection, which are just and reasonable. Therefore, the learned counsel contended that 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 also perused the entire materials on record.

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



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45 years and was earning a sum of Rs.50,000/- per month as an office assistant and hostel warden in S.S.M.Polytechnic College, Komarapalayam, and also by doing agricultural work. The appellants filed salary certificate and marked as Ex.X2 and examined one Chinnusamy, Lab Instructor as PW2 to prove the avocation and income. The Tribunal failed to consider Ex.X2- salary certificate and evidence of PW2, fixed only a sum of Rs.12,000/- per month as notional income of the deceased, which is very meagre. On a perusal of Ex.X2 salary certificate produced by the appellants to prove the income of the deceased, the gross salary of the deceased is mentioned as Rs.26,940/- at the time of accident. Further, as per the evidence of PW2-Chinnusamy, who is a lab instructor of the educational institution, the deceased was working in the SSM Polytechnic College, Komarapalayam. The Tribunal has not given any reason for not accepting Ex.X2-salary certificate and evidence of PW2. Taking into consideration Ex.X2-Salary certificate and evidence of PW2, we fix the income of the deceased at Rs.26,940/-. At the time of accident, the deceased was 48 years. The appellants are entitled to 25% enhancement towards future prospects 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]** and



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this Court is inclined to grant 25% enhancement towards future prospects. The Tribunal following 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)** has rightly applied multiplier '13'. There are five dependents of the deceased and hence, the Tribunal ought to have deducted $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$ towards personal expenses of the deceased. Thus, by granting 25% enhancement towards future prospects and by deducting $1/4^{\text{th}}$ towards personal expenses of the deceased the compensation awarded by the Tribunal towards loss of income is modified to Rs.39,39,975/- (Rs.26,940/- + 6735 (Rs.26940/- X 25%) X 12 X 13 X $3/4$).

9. Apart from awarding a sum of Rs.40,000/- towards Loss of Consortium to the first appellant, the Tribunal has awarded a sum of Rs.20,000/- each totalling Rs.1,00,000/- (Rs.20,000/- x 5) towards love and affection to the appellants 1 to 5, which is not correct. Hence, the same is hereby modified and enhanced by awarding a sum of Rs.40,000/- each to the respondents 2 & 3 towards loss of parental consortium and Rs.40,000/- each to the respondents 4 & 5 towards loss of filial consortium. The award of Rs.25,000/- towards funeral expenses, in the



opinion of this Court, is excessive, and hence, the same is reduced to Rs.15,000/-. The amounts awarded by the Tribunal under Loss of consortium Rs.40,000/- is just and reasonable and hence, the same is hereby confirmed. The Tribunal has not awarded any amount towards loss of estate. Hence a sum of Rs.15,000/- is awarded towards Loss of Estate. 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	12,48,000/-	39,39,975/-	Enhanced
2.	Loss of love of affection	1,00,000/-	----	Set aside
3.	Loss of Parental Consortium to appellants 2 & 3	-----	80,000/-	Granted
4.	Loss of Filial Consortium to appellants 4 & 5	-----	80,000/-	Granted
5.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
6.	Loss of Estate	-----	15,000/-	Granted
7.	Funeral expenses	25,000/-	15,000/-	Reduced
	Total	Rs.14,13,000/-	Rs.41,69,975/-	Enhanced by Rs.27,56,975/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,13,000/- is



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hereby enhanced to Rs.41,69,975/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are directed to deposit the entire 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 the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1605 of 2019, on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem. 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.)
30.11.2022

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Index : Yes / No
Internet : Yes / No



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- 1.The Special District Judge,
Motor Accidents Claims Tribunal,
Salem.
- 2.The Section Officer,
VR Section, High Court,
Madras.



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