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C.M.A. No.3596 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.3596 of 2021

1.Revathi

2.Subramaniam

.. Appellants

Vs.

1.Velmurugan

2.The National Insurance Co. Ltd.,
No.384-2, NH7, Bengaluru Bypass, Near Circle,
Kondalampatty, Salem 636 010.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.08.2021, made in M.C.O.P. No.73 of 2020, on the file of the Special District Court, (Motor Accident Claims Tribunal) Salem.



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For Appellants : Mr.T.S.Arthanareeswaran

For R2 : Mr.D.Bhaskaran

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 02.08.2021, made in M.C.O.P. No.73 of 2020, on the file of the Special District Court, (Motor Accident Claims Tribunal) Salem.

2.The appellants-claimants filed M.C.O.P. No.73 of 2020, on the file of the Special District Court, (Motor Accident Claims Tribunal) Salem, claiming a sum of Rs.25,00,000/- as compensation for the death of one Tamilselvan, who died in the accident that took place on 30.06.2019.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Tanker Lorry owned by the 1st respondent and directed the respondents, as owner and insurer of the offending vehicle respectively, to



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jointly and severally pay a sum of Rs.11,33,000/- as compensation to the appellants.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 02.08.2021, made in M.C.O.P. No.73 of 2020, 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 Tamilselvan was aged 23 years, a B.E. Graduate and was earning a sum of Rs.12,000/- per month by doing part time job as Computer Instructor. In the accident, the said Tamilselvan sustained severe head injury, multiple grievous injuries all over the body and died on the way to Hospital. But for the accident, he would have got good job and earned more income. The Tribunal failed to grant any enhancement towards future prospects while awarding compensation towards loss of dependency. The Tribunal also failed to award any amount towards loss of estate. In any event, the total compensation granted by the Tribunal is meagre and prayed for enhancement of the compensation.



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6.Per contra, the learned counsel appearing for the 2nd respondent-

Insurance Company contended that the appellants failed to prove the avocation and income of the deceased. In the absence of any evidence, 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.

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 Tamilselvan was aged 23 years, a B.E. Graduate and was working as a Computer Instructor and earning a sum of Rs.12,000/- per month. The appellants did not file any document to prove the avocation and income. In the absence of any oral and documentary evidence to prove the avocation and income of the deceased, the Tribunal



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fixed a sum of Rs.7,000/- per month as notional income of the deceased. The said amount is meagre. The accident is of the year 2019. Though the appellants claimed a sum of Rs.12,000/- per month as income of the deceased Tamilselvan, the Court has got power to grant more compensation than the amount claimed by the claimants. Taking into consideration the age, educational qualification of the deceased and year of accident, we fix a sum of Rs.15,000/- per month as notional income of the deceased Tamilselvan. The Tribunal having rightly applied the multiplier '18', failed to grant any enhancement towards future prospects of the deceased. 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 40% enhancement towards future prospects. The deceased was a Bachelor at the time of accident. The Tribunal erroneously deducted 1/3rd towards personal expenses of the deceased, instead of deducting 50%. Hence, fixing the monthly income of the deceased at Rs.15,000/-, granting 40% enhancement towards future prospects, applying multiplier '18' and after deducting 50% towards personal expenses of the deceased, the amounts



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awarded by the Tribunal towards loss of dependency is modified to Rs.22,68,000/- {[Rs.15,000/- + Rs.6,000/- (40% of Rs.15,000/-)] x 12 x 18 x 50%}. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are excessive. Hence, the same are reduced and a sum of Rs.40,000/- each is awarded towards loss of love and affection to the appellants and a sum of Rs.15,000/- is awarded towards funeral expenses. The Tribunal failed to award any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate to the appellants. 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	10,08,000/-	22,68,000/-	Enhanced
2.	Loss of estate	-	15,000/-	Granted
3.	Funeral expenses	25,000/-	15,000/-	Reduced
4.	Loss of love and affection	1,00,000/-	80,000/-	Reduced
	Total	11,33,000/-	23,78,000/-	Enhanced by Rs.12,45,000/-

9.In the result, the appeal is partly allowed and the amount awarded by



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the Tribunal at Rs.11,33,000/- is enhanced to Rs.23,78,000/- together with interest at the rate of 7.5% per annum (excluding the default period if any)

from the date of petition till the date of deposit. The respondents are jointly and severally 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.73 of 2020. On such deposit, the appellants 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 appellants are directed to pay necessary Court fee on the enhanced award amount, if any. No costs.

(V.M.V., J) (S.M., J)
24.11.2022

(gsa)



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**V.M.VELUMANI,J.
and
SUNDER MOHAN,J.**

(gsa)

To

- 1.The Special District Judge,
(Motor Accident Claims Tribunal),
Salem.
- 2.The Section Officer,
V.R Section,
High Court, Madras.

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