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C.M.A.No.1245 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2023

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHACHAKRAVARTHY**

**C.M.A.No.1245 of 2023
and
C.M.P.No.12163 of 2023**

Branch Manager
National Insurance Company Limited
D.No.19/B, S.R.Commplex, Rajamani Thottam,
Bhavani Main Road, NH-47
Sangagiri Taluk,
Salem District.

... Appellant

Vs.

1. Santhi
2. Muhin
3. Minor Kaviya
rep. by N.F./Mother santhi
4. Masilamani

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 25.08.2022 made in MCOP No.375 of 2019 on the file of the Motor Accident Claims Tribunal, Sub Judge at Rasipuram.



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For Appellant : Mr.R.Sree Vidhya

For Respondent : Mr.Yuvaraj

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award of the Motor Accident Claims Tribunal at Rasipuram, dated 25.08.2022 in M.C.O.P.No.375/2019. Aggrieved by the quantum of the award, the Insurance Company is on appeal.

2. Heard Mrs.R.Sree Vidhya, learned counsel for the appellant and Mr.Yuvaraj, the learned counsel for the respondent.

3. Learned counsel for the appellant, taking this Court through the award and the evidence would contend that firstly, when it is the case of the claimant that he was employed as Assistant Director, Horticulture Department, the Tribunal, while computing his actual income had taken the gross salary as per the salary slip and had not given any deduction whatsoever in respect of Provident Fund and other permissible deduction. Therefore, she would submit that calculating the monthly salary at Rs.32,092/- is on the higher side. She would further submit that after awarding a sum for loss of estate, funeral expenses and loss of consortium, awarding Rs.1,00,000/- again, for loss of love and affection



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is erroneous.

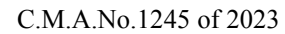
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4. Per contra, the learned counsel for the respondent would submit that the respondent was working in the Horticulture Department and only a minimum salary was fixed and not even the subsequent raising of other Pay Commission was taken into account.

5. We have considered the submissions made on either side and perused the material records of the case.

6. As far as taking of income is concerned, we find that the deceased was aged 45 years and was working as Assistant Director in the Horticulture Department. Considering the overall qualification of the deceased and his designation and his nature of work, taking into account the gross salary as per the salary slip at Rs.32,092/- is not excessive or erroneous. Therefore, we reject the said submission made on behalf of the learned counsel for the appellant.

7. As far as the second submission is concerned, it is now made clear by the Hon'ble Supreme Court of India that the award of compensation can only be under four heads namely, loss of dependency, loss of estate, loss of consortium and funeral expenses. Therefore, the award of sum of Rs.1,00,000/- for loss of love and affection is incorrect.



8. Accordingly, we reduce the total award as granted by the Tribunal i.e., a sum of Rs.55,65,664/- to Rs.54,65,664/- (Rupees Fifty Four Lakhs Sixty Five Thousand Six Hundred and Sixty Four only. Accordingly, the Civil Miscellaneous Appeal stands partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

9. The Insurance company shall deposit the entire sum awarded, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of the order. On such deposit being made, the claimants are entitled to withdraw the entire deposit amount, in the same proportion as ordered by the Tribunal.

(J.N.B,J.) (D.B.C, J.)
22.06.2023

To
The Motor Accident Claims Tribunal,
Sub Judge at Rasipuram.



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J. NISHA BANU, J.
and
D.BHARATHA CHAKRAVARTHY, J.

vsi

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