IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.928 of 2020

1.J.Mohamed Ali
2.J.Rahamadbee
3.Nilofer Nisa ... Appellants

Vs.

1.A.Sampathu

2.The Oriental Ins. Co. Ltd.,
Motor Third Party Claims Hub,
Oriental House, 2nd Floor,
No.216, Prakasam Salai, Broadway,
Chennai – 600 003. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.03.2019 M.A.C.T.O.P.No.2905 of 2016 on the file of the Special Sub Judge – I, (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.M.Mahendran

For Respondents : Mr.M.J.Vijayaraghavan [R2]

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JUDGEMENT

The claimants are before this Court seeking an enhancement of the award passed by the Special Sub Judge – I, (Motor Accidents Claims Tribunal), Chennai, in M.A.C.T.O.P.No.2905 of 2016, dated 11.03.2019.

2. The appellants are the daughter and sons of the deceased Kathar Bee and the husband of the deceased pre-deceased her. On 03.02.2016 at about 15.00 hrs, the deceased was traveling as pillion rider in motorcycle bearing Reg.No.TN-21-BZ-0648 along Gandhi Road, Tambaram. One J.Thameen Ansari, was riding the motorcycle. While they were proceeding opposite to Muthu Residency, the rider of the motorcycle lost its control and fell down, in which the pillion rider fell down and sustained fatal injuries. Therefore, the claimants filed a claim petition claiming compensation of Rs.20,00,000/- before the Tribunal in M.A.C.T.O.P.No.2905 of 2016.

3. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked 10 documents viz., Ex.P.1 to Ex.P.10. On the

side of the respondents, they have examined one witness viz., R.W.1 and marked 3 documents viz., Ex.R.1 to Ex.R.3. After adjudication, the Tribunal partly allowed the petition and awarded a sum of Rs.8,72,300/- as compensation to the claimants. However, by fixing 10% contributory negligence on the part of the deceased, the Tribunal awarded a sum of Rs.7,85,070/- as compensation to the claimants. Questioning the negligence and seeking enhancement of compensation, the present appeal has been filed by the appellants/claimants.

4. The learned counsel appearing for the appellants submitted that, though the deceased earning a sum of Rs.25,000/- per month, however, the Tribunal fixed a sum of Rs.7,000/- as monthly income, which is on the lower side and the same requires to be reconsidered by this Court. That apart, the amount awarded under the head of loss of love and affection was also on the lower side and was not in consonance with the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680***.

He also submitted that the compensation awarded by the Tribunal under the head funeral expenses, which also requires to be reconsidered by this Court. Further, the fixation of 10% contributory negligence on the part of the deceased is wholly unsustainable. Accordingly, he prays for allowing the appeal.

5. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, by considering all the oral and documentary evidence, the Tribunal has fixed 10% contributory negligence on the part of the deceased. However, in similar type of cases, this Court fixed 20% negligence as against the tort-feasor. In the present case, only 10% negligence has been fastened against the deceased, which is sustainable and the same does not require any interference. Further, the compensation awarded under various heads are just and reasonable, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellants and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

7. The happening of the accident and the travelling of the deceased in the said vehicle and the death of the deceased is not in dispute. Admittedly, the deceased travelled as pillion in the first respondent's vehicle, which was insured with the second respondent along with two others. The driver of the said vehicle driven the same in a rash and negligent manner, which is evident from the evidence of P.W.1 and P.W.2 and the document Ex.P.1. Therefore, the Tribunal had arrived at a conclusion that the accident had occurred due to the rash and negligent driving by the rider of the two wheeler and fixed 10% contributory negligence on the part of the deceased, which is *per se* sustainable. Hence, the contributory negligence fixed by the Tribunal on the part of the deceased is based on proper reasoning and does not required to be interfered with.

8. Now, coming to the question of quantum of compensation awarded by the Tribunal, to compute the income under the head loss of income, no document in support of proof of the income of the deceased has been filed. However, it is claimed by the claimants that at the time of accident, the deceased was the proprietor of M/s.Jamal Chicken Stall, Sunguvarchathiram and earned a sum of Rs.25,000/- per month. As per the decision of the Hon'ble Apex Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459,*** notional income of a vegetable vendor is fixed at Rs.6,500/-, where income of the deceased is not proved through documentary evidence. However, the Tribunal had fixed a sum of Rs.7,000/- as notional income, which is on the lower side since the accident had occurred in the year 2016. Hence, by applying the ratio laid down by the Hon'ble Supreme Court in *Syed Sadiq's* case, fixing a notional income of Rs.12,000/- and adding future prospects at 10%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** the total income per month is quantified at Rs.13,200/-. Deducting 1/3rd

towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.8,800/- per month and the deceased being aged about 55 years, as evidenced from the records, adopting the multiplier of 11 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income to the family is arrived at Rs.8,800/- * 12 * 11 = Rs.11,61,600/-, which is worked out as follows :-

Loss of Income	**Amount in Rs.**
Notional income (Per month)	12,000
Add: Future Prospects (Rs.12,000 x 10%) (Per month)	1,200
	13,200
Less: Personal expenses (1/3rd) (Rs.13,200/- x 1/3rd) (Per month)	4,400
	8,800
Notional income (per annum) (Rs.8,800/- x 12)	1,05,600
Multiplier	11
Total	**11,61,600**

9. Further, the Tribunal had awarded a sum of Rs.75,000/- towards loss of love and affection; Rs.15,000/- towards loss of estate; Rs.5,000/- towards transport charges and Rs.15,000/- towards funeral expenses. This Court finds that the compensation awarded under the heads loss of estate,

transport charges and funeral expenses are just and reasonable and does not require any interference. However, insofar as the compensation awarded towards loss of love and affection expenses is concerned, this Court feels that a sum of Rs.40,000/- to each of the claimants would be just and reasonable compensation.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Total Loss of dependency	**7,62,300/-**	**11,61,600/- (enhanced)**
Loss of love and affection (Rs.40,000/- x 3)	**75,000/-**	**1,20,000/- (enhanced)**
Loss of estate	15,000/-	15,000/-
Transport charges	5,000/-	5,000/-
Funeral Expenses	15,000/-	15,000/-
Total compensation fixed at	**8,72,300/-**	**13,16,600/-**
90% of the compensation	**7,85,070/-**	**11,84,940/-**

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed and

the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.7,85,070/-** to **Rs.11,84,940/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.A.C.T.O.P.No.2905 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants/claimants. No costs.

27.11.2023

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No
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M.DHANDAPANI,J.,

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To

1.The Special Sub Judge – I, (Motor Accidents Claims Tribunal), Chennai.
2.The Section Officer, V.R. Section, High Court, Madras.

C.M.A.No.928 of 2020

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