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C.M.A.No.296 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.296 of 2012

1. Kalaivani
2. Kaveriammal (Deceased) ... Appellant/ Petitioner
Vs.

1. Vadivel
2. IFFCO TOKIO General Insurance Co.Ltd.,
Rep. by its Manager,
Thulasi Chambers, 3rd Floor,
T.V.Sami Road, (West),
R.S.Puram, Coimbatore. ...Respondents 1 & 2/Respondents
3. Jayalakshmi
4. Balakrishnan
5. Pushpa Rani ...Respondents 3 to 5 / LRs of the deceased 2nd Appellant
(Respondents 3 to 5 are brought on record
as legal representatives of the deceased 2nd
appellant Kaveriammal vide order
made in C.M.P.No.22351 of 2023 in C.M.A.No.296 of 2012).

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking to set aside the Judgment and decree dated 16.06.2011 made in M.C.O.P.No.770 of 2008 on the file of Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri.

For Appellants : M/s.N.A.Nassir Hussain

For Respondents : Mr.J.R.Michael Visuvasam [R2]

Ex-parte [R1]



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JUDGEMENT

The Civil Miscellaneous Appeal has been filed to set aside the Judgment and decree dated 16.06.2011 made in M.C.O.P.No.770 of 2008 on the file of Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri.

2. The brief facts of the case are as follows:

On 17.01.2007, the husband of the first appellant who is the deceased herein was travelling as a pillion rider in TVS Suzuki Max Motor cycle bearing Registration No.TN 29 E 0443, which was driven by one Krishnan. At that time, an Yamaha Motor Cycle bearing Registration No.TN 34 B 7637 belonging to the first respondent driven by its driver came in the opposite direction in a rash and negligent manner and dashed against the said TVS Suzuki Max Motor cycle, due to which, the deceased who was seated as a pillion rider in the said vehicle sustained grievous injuries and was admitted in the hospital. Since the surgery was not performed due to the diabetic condition of the deceased, he was discharged from the hospital. Thereafter, he was again admitted in the hospital on 18.04.2007, while he was in continuous treatment,



he died on 18.05.2007. While so, the appellants filed a claim petition before the Tribunal seeking a sum of Rs.10,00,000/- as compensation, however, the Tribunal awarded a sum of Rs.2,26,317/-. Not satisfied with the quantum of compensation awarded by the Tribunal the appellants have filed the present appeal.

3. Before the Tribunal, the claimants examined two witnesses viz.P.W.1 and P.W.2 and marked 14 documents viz., Ex.P.1 to Ex.P.14. No witnesses were examined nor any documents were marked on the side of the respondents. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.2,26,317/- as compensation under various heads. Aggrieved by the same, the present appeal has been filed by the appellants/claimants.

4. The learned counsel for the appellants submits that due to the said accident the deceased sustained grievous injuries and was admitted in a hospital on 17.01.2007. Due to the diabetic condition faced by the deceased, the surgery was not performed to the deceased thereby he was discharged from hospital. Thereafter, he developed severe stomach pain and was re-admitted in the



hospital and after continuous treatment he died on 18.05.2007. Though the

P.W.2 Doctor was examined before the Tribunal and in his deposition he has stated that the death of the deceased was not due to injuries sustained by him at the time of accident, however, he died subsequently, due to the injuries which led to several complications. He further submits that though all those facts were established before the Tribunal, the Tribunal awarded meagre compensation under the head loss of earning capacity which requires enhancement and is liable to be interfered with.

5. The learned counsel appearing for the second respondent/insurance company submits that admittedly the Doctor who has given treatment to the deceased was examined as P.W.2 and he deposed in his cross examination that the death of the deceased was not due to the injuries sustained by him at the relevant point of time. He further submits that the Tribunal upon perusing the oral and documentary evidences has rightly award a sum of Rs.50,000/- under the head loss of earning capacity and the same does not require any interference. Accordingly, he prayed to dismissal of this appeal.

6. Heard the learned counsel appearing for the appellants and the



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learned counsel appearing for the second respondent/insurance company and perused the materials placed on record.

7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the claimants is with regard to the quantum of compensation awarded. It is the claim of the insurance company that though the Doctor was examined as P.W.2 before the Tribunal and in his cross examination he has stated that the death of the deceased was not due to the injuries sustained by him at the time of accident and the surgery was not performed due to the diabetic condition of the deceased, however, it cannot be said that the Insurance Company is liable to pay the compensation. Though the accident happened on 17.01.2007 and the deceased died on 18.05.2007, however, no evidence was shown by both the parties in order to prove that the deceased recovered and turned up to his work in the Government Department. In the absence of any records, this Court presumes that the death of the deceased is due to the said injury which was caused due to the accident. Hence, this Court is inclined to adopt multiplier method.



8. Further it is seen that the age of the deceased 48 years, at the time of accident and as per the decision of the Hon'ble Supreme Court in case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the multiplier adopted between the age group of 40-50 years is 13. As per Ex.P.10 the deceased earned a sum of Rs.11,229/- per month as notional monthly income. It has been the view of the courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459***, fixing a notional income of Rs.11,000/- and adding future prospects at 30%, 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.14,300/-. Deducting 1/2nd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.7,150/- per month and the deceased being aged about 48 years, as evidenced from the records, adopting the multiplier of 13 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 fixed at Rs.7,150/- * 12 *



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13 = Rs.11,15,400/-, which is worked out as follows :-

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<i>Loss of Income</i>	<i>Amount (in Rs.)</i>
Notional income (Per month)	11,000
Add: Future Prospects (Rs.11,000 x 30%) (Per month)	3,300
	14,300
Less: Personal expenses (1/2 nd) (Rs.14,300/- x 1/2) (Per month)	7,150
	7,150
Notional income (per annum) (Rs.7,150/- x 12)	85,800
Multiplier	13
Total	11,15,400

9. The Tribunal has granted a sum of Rs.2,000/- under the head of "transportation", which is also on the lower side and the same is also enhanced to a sum of Rs.5,000/-. The Tribunal has awarded a sum of Rs.2,000/- each under the head extra nourishment, transportation and nutrition which is on the lower side and the same is enhanced to a sum of Rs.5,000/- each under the said heads. No amount has been granted under the head loss of consortium, hence the same is enhanced to a sum of Rs.40,000/- under the said head. Further the other heads awarded by the Tribunal is just and reasonable and the same does not require any interference. Since the second appellant, who is the mother of the deceased died during the pendency of the appeal, the legal heirs of the second appellant are not entitled for any compensation, as they have not



adduced any proof before the Tribunal in order to prove that they are the legal heirs of the second appellant. Hence, the first appellant is only entitled for the compensation awarded by this Court.

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

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Disability	50,000/-	-
2	Loss of Income	-	11,15,400/- (awarded)
3	Loss of consortium	-	40,000/- (awarded)
4	Pain and sufferings	10,000/-	10,000/-
5	Mental agony	5,000/-	5,000/-
6	Extra nourishment	2,000/-	5,000/- (enhanced)
7	Transport expenses	2,000/-	5,000/- (enhanced)
8	Loss of estate	2,000/-	5,000/- (enhanced)
9	Medical bills	1,55,317/-	1,55,317/-
	Total	2,26,317/-	13,40,717/-

11. Accordingly, the appeal is partly allowed and the impugned



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Award of the Tribunal is modified by enhancing the compensation amount from Rs.2,26,317/- to Rs.13,40,717/-. The appellant/insurance company is directed to deposit the said amount to the credit of M.C.O.P.No.770 of 2008 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 six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the first appellant / claimant through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petitions are closed.

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Speaking Order : Yes/No

Index : Yes/No

NCC : Yes/No

To

1. Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri.
2. The Section Officer, V.R. Section, High Court, Madras.



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CMP.Nos.22351 & 22349 of 2023 in
CMA.No.296 of 2012

M.DHANDAPANI,J

These petitions are filed by the petitioner to condone the delay of 423 days in setting aside abatement in respect of the deceased 2nd appellant namely Kaveriammal in the above appeal; set aside the abatement in respect of the deceased 2nd appellant namely Kaveriammal in the above appeal and to bring on record the respondents 3 to 5 herein / 3rd party in the above appeal as legal heirs of the deceased 2nd appellant in the above appeal.

2. Heard the learned counsel appearing for the respective parties.

3. Having satisfied with the reasons stated in the accompanying affidavits, these petitions are ordered.

04.10.2023

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Office to Note :

carry out necessary amendment

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