



C.M.A.No.3519 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3519 of 2012

1.V.Sathya Sankari
2.Pavithra Lochani (minor)
3.Bharath Rajan
(3rd respondent was declared as Major and her mother and next friend V.Sathya Sankari has been discharged from the Guardianship as per the order of this Court dated 21.12.2022 made in CMP Nos.16195 & 16196 of 2017 in CMA No.3519 of 2012.

4.Pangajavalli

... Appellants

..Vs..

1.Pavithra Agencies
No.46, Mudichur Road
West Tambaram,
Chennai-600 045.
(Set exparte before the Tribunal)

2.ICICI Lombard General Insurance
Co. Ltd.,
No.140, Chottabai Centre
Nungambakkam High Road
Chennai-600 034.

... Respondents



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Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decretal order dated 27.06.2012 made in M.C.O.P No.910 of 2009 on the file of the Motor Accident Claims Tribunal/ III Additional District and Sessions Judge, Poonamallee.

For Appellants	: Mrs.Maithri Mahalingam For Mr.J.Mahalingam
For Respondent	: Mrs.R.Sree Vidhya for R2 R1- Exparte before the Tribnal

JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 27.06.2012 passed by the Motor Accident Claims Tribunal/III Additional District and Sessions Judge. Poonamallee, in M.C.O.P No.910 of 2009.

2. The appellants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.



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3. The details of the compensation awarded by the Tribunal under the

impugned award are as follows:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of dependency Monthly Income Rs.10,400/- 1/3 rd deduction – Rs.6,933/- (Rs.6,933 x 12 x 15)	12,47,940/-
Loss of Consortium	10,000/-
Loss of Estate	Nil
Funeral Expenses	5,000/-
Loss of Love and Affection to the 2 nd and 3 rd petitioners	15,000/-
Total	12,77,940/-

4. Before the Tribunal, the Appellants/claimants has filed 8 documents which were marked as Ex.P1 to Ex.P8 and three witnesses were examined as PW1 to PW3 on their side. On the side of the 2nd Respondent/Insurance Company, neither any document was filed nor any witness was examined.

5. Heard the learned counsel for the appellants and the learned counsel for the second respondent/Insurance company and I have perused



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the materials on record.

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6. The learned counsel appearing for the Appellants/Claimants submitted that without appreciating the evidence of PW1 and PW2, the quantum of compensation awarded by the Tribunal is not reasonable. The Tribunal has not awarded any compensation towards loss of future prospects as per the judgment of the Hon'ble Supreme Court. She further submitted that no amount was awarded towards Loss of Estate and Transport Expenses and the compensation amount awarded towards Pecuniary benefits, Loss of Love and Affection and Funeral Expenses are very meagre and hence, she prayed to enhance the compensation.

7. The learned counsel appearing for the second respondent/Insurance Company submitted that the Tribunal after analysing the evidence on record, has rightly awarded the compensation to the appellants/claimants and hence, the award passed by the Tribunal does not warrant any interference by this Court.



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8. As seen from the impugned award, the Tribunal has not awarded any compensation towards loss of future prospects which the Appellants/claimants are legally entitled to as per the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & others*** reported in ***2017 (2) TN MAC 609 (SC)***. Accordingly, this Court grants 25% towards loss of future prospects to the Appellants.

9. The Tribunal has applied the 15 multiplier instead of 14 multiplier. Since the deceased was aged 44 years at the time of accident as per Ex.P4, namely, copy of the postmortem certificate, this Court is inclined to adopt 14 multiplier. Since the appellants are wife, two children out of which one child is minor and the mother of the deceased, 1/3rd will have to be deducted towards the personal expenses of the deceased. The Tribunal has assessed the notional monthly income of the deceased as Rs.10,400/-. After giving due consideration to the year of the accident and the avocation of the deceased as the Team Leader, the said assessment is a correct assessment.



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10. In addition to the pecuniary loss sustained by the appellants, the Tribunal has granted the compensation of Rs.10,000/- towards loss of consortium, Rs.15,000/- towards love and affection, Rs.5,000/- towards funeral expenses. However, the compensation awarded by the Tribunal towards loss of consortium, funeral expenses and loss of love and affection is low in the considered view of this Court. As per the settled practice, the compensation towards loss of consortium is enhanced to Rs.40,000/- from Rs.10,000/- and funeral expenses including transport is enhanced to Rs.15,000/- from Rs.5,000/- and towards love and affection to the 2nd and 3rd petitioners, Rs.80,000/- is enhanced from Rs.15,000/- by this Court. The Tribunal has erroneously failed to award any compensation towards loss of estate and they are legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the appellants towards loss of estate.

11. For the forgoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.12,77,940/- to Rs.16,06,060/- as detailed hereunder.



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Dependency Monthly Income Rs.10,400/- 1/3 rd deduction – Rs.6,933/- (Rs.6,933/- x 12 x 15)	12,47,940/-	(Monthly Income Rs.10,400/- + Rs.2,600 (25% future prospects) =Rs.13,000/- 1/3 rd deduction = Rs.8,667/- (8667x12x14)= 14,56,056/-
Loss of Consortium	10,000/-	40,000/-
Loss of Estate	Nil	15,000/-
Transport and Funeral Expenses	5,000/-	15,000/-
Loss of Love and Affection to the 2 nd and 3 rd petitioner	15,000/-	80,000 /-
Total	12,77,940/-	16,06,056/- rounded off to Rs.16,06,060/-

12. In the result,

(i) This appeal is allowed and the second Respondent Insurance Company is directed to deposit the modified award amount i.e, **Rs.16,06,060/-** along with interest at the rate of 7.5% per annum, after deducting the amount already deposited, if any, to the credit of MCOP.No.910 of 2009 within a period of four weeks from the date of

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receipt of a copy of this Judgment.

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(ii) On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount as per the ratio apportioned by the Tribunal to the bank accounts of the Appellants 1, 3 and 4 along with accrued interest through RTGS within a period of two weeks thereafter.

(iii) Insofar as the minor Appellant No.2 is concerned, the Tribunal is directed to deposit the share of her award amount bearing fixed deposit in any one of the Nationalised Bank till she attain majority and the first Appellant/mother of the minor is permitted to withdraw the interest accrued once in six months for the welfare of the minor. No costs.

12.01.2023

Index:Yes/No

Internet:Yes/No

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To

1. The III Additional District and Sessions Judge
Motor Accidents Claims Tribunal

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Ponnamallee.

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2. The Section Officer

V.R.Section, High Court of Madras.

A.A.NAKKIRAN, J.
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