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C.M.A.No.1043 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1043 of 2018

1.K.Pappammal
2.K.Doraikannu
3.T.Hamsavalli
4.S.Meenakshi
5.A.Rajammal

... Appellants

..Vs..

1.R.Sudhakar
(R1 was set exparte before the Tribunal)

2.Royal Sundaram Alliance Insurance
Co. Ltd., Subramaniam Buildings
No.1, Club House Road, 1st Floor
Anna Salai, Chennai-600 002.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.01.2018 made in MACTOP No.7413 of 2014 on the file of the V Judge, Motor Accidents Claims Tribunal (Chief Small Causes Court), Chennai.

For Appellants : Mr.P.T.Saleem Fathima

For Respondents : Mr.K.Vinod for R2
R1 - Exparte



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JUDGMENT

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

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 (Rs.6,500 x 12=78,000 – 50% = Rs.39,000 x 7 multiplier)	2,73,000/-
Loss of Consortium	40,000/-
Loss of Estate	15,000/-
Funeral expenses	15,000/-
Total	3,43,000/-



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4. The learned counsel appearing for the appellants submitted that the deceased was a an agriculturist and during off seasons, was doing building construction work and was earning a sum of Rs.12,000/- per month. However, the Tribunal has erred in fixing the monthly income of the deceased as Rs.6,500/- and no amount was added towards “ Future Prospects”. Further, she submitted that the age of the deceased was 65 years at the time of accident, but the Tribunal has taken the average age of the deceased and wrongly adopted the multiplier '7' and that the Tribunal has not awarded any amounts towards " Love and affection". The Tribunal has wrongly came to a conclusion that the wife of the deceased is the only dependent and thereby deducted 50% towards personal expenses. She further submitted that the compensation awarded under the other heads are also very meagre and hence, prayed for enhancement of compensation.

5. The learned counsel appearing for the second respondent/ insurance company submitted that after considering the oral and documentary evidence record, the Tribunal has awarded a just and reasonable compensation and therefore, the award passed by the Tribunal



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does not warrant any interference by this court.

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6. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent/Insurance Company and also perused the materials on record.

7. Insofar as the compensation towards future prospects is concerned, as seen from the impugned award, following the decision of Hon'ble Supreme Court in *Pranay Sethi* case, the Tribunal has not awarded any compensation towards loss of future prospectus since the age of the deceased was 65 at the time of the accident and hence, this Court does not warrant any interference on the said head.

8. In the instant case, the deceased died at the age of 65 years. The main contention of the learned counsel for the appellants is that the appellants 2 to 5 being son and daughters of the deceased are entitled to compensation under the head of love and affection. But, the Tribunal has failed to award any compensation to the appellants 2 to 5 towards love and



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affection and wrongly came to a conclusion that the wife is the only dependent and fixed the monthly income of the deceased as Rs.6,500/- and thereby, deducted 50% towards personal expenses of the deceased and calculated the loss of dependency at Rs.2,73,000/- which is erroneous in law.

9. The Tribunal has rightly applied the 7 multiplier since the deceased was aged 65 years at the time of accident as per Ex.P2 namely, copy of the postmortem certificate. Since the appellants are wife, son and married daughters 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.6,500/- which is on the lesser side. Hence, considering the year of accident and the age of the deceased, this Court is inclined to fix Rs.7000/- as notional income. Further, the Tribunal has not awarded any compensation under the head of love and affection to the appellants/claimants 2 to 5 being son and daughters of the deceased. However, this Court is inclined to award adequate compensation under the said head and accordingly, the appellants/claimants 2 to 5 are entitled to



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Rs.40,000/- each towards love and affection. Except the compensation awarded under the head of love and affection, the appellants 2 to 5 are not entitled to any other compensation.

10. Insofar as the quantum of compensation awarded by the Tribunal under the heads loss of consortium, loss of estate and funeral expenses awarded by the Tribunal are concerned, the same is a just compensation in the considered view of this Court.

11. For the forgoing reasons, the compensation awarded by the Tribunal is modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Dependency	(Rs.6,500 x12 = Rs.78,000 - 50% personal expenses Rs.39,000x7) 2,73,000/-	(7000 x 12 x 7= 5,88,000/-, - 1/3 personal expenses) 3,92,000/-
Loss of Consortium	40,000/-	40,000/-
Loss of Love & affection	Nil	1,60,000/-
Loss of Estate	15,000/-	15,000/-



<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Funeral Expenses	15,000/-	15,000 /-
Total	3,43,000/-	6,22,000/-

12. In the result,

(i) This appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from 3,43,000/- to Rs.6,22,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation.

(ii) Out of the entire award amount, the 1st appellant being the wife of the deceased is entitled to Rs.4,62,000/- and the appellants 2 to 5 being son and daughters are entitled to Rs.40,000/- each (towards love and affection), totalling Rs.1,60,000/-.

(iii) The second respondent Insurance company is directed to deposit the modified award amount i.e, Rs.6,22,000/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MACTOP.No.7413 of 2014 within a period of six weeks from the date of receipt of a copy of this Judgment.



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(iv) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the appellants/claimants through RTGS within a period of two weeks thereafter. No costs.

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Index: Yes/No

Speaking or Non-Speaking Order: Yes/No

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To

1. The V Judge, Motor Accidents Claims Tribunal
(Chief Small Causes Court), Chennai.

2. The Section Officer
V.R. Section, High Court of Madras.



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A.A.NAKKIRAN, J.

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