



C.M.A.No.418 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.12.2023**

CORAM:

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

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1.Suganeswari

2.Moganraj

3.Arulraj

[A3 is suo-motu declared as major and her mother A1
Suganeswari is discharged from guardianship of A3 vide
order dated 15.12.2023 made in C.M.A.No.418 of 2021]

4.Perumayi

... Appellants

Vs.

1.Muthudurai

2.M/s.National Insurance Co. Ltd.,
Represented by is Divisional Office-I,
L.R.N. Complex,
Salem.

[1st respondent remained exparte before the Tribunal,
Hence, notice may be dispensed with the 1st respondent]

... Respondents



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Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking for enhancement of the compensation amount awarded in the judgment and decree dated 07.03.2020 made in M.C.O.P.No.179 of 2019 on the file of the Special District Judge/Motor Accident Claims Tribunal, Salem.

For Appellants : Mr.C.Ramaraj

For Respondents : Exparte [R1]

Mr.D.Bhaskaran [R2]

JUDGEMENT

Assailing the fair and decreetal order passed by the Tribunal in and by which the Tribunal had awarded lower compensation, the present appeal has been filed by the claimants/appellants seeking enhancement of compensation.

2. Brief facts which are necessary for disposal of this appeal are as follows:-

(i) The appellants are the wife, sons and mother of the deceased Selladurai. On 05.11.2018, at about 10.30 a.m., the deceased Selladurai was



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walking along the side of Veppadai to Pallipalayam Road and when he reached near E.Kattoor bus stop, the offending vehicle bearing Regn.No.TN 55 AM 9082 driven by its driver in a rash and negligent manner, hit on the backside of the deceased, due to which, the deceased sustained grievous injuries and subsequently died. Therefore, the claimants have filed a claim petition under Section 166 of Motor Vehicles Act, 1988, claiming compensation of Rs.50,00,000/- before the Tribunal.

3. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked 21 documents viz., Ex.A.1 to Ex.A.21. On the side of the respondents, no witnesses were examined and marked one document viz., Ex.R.1. After adjudication, the Tribunal, allowed the petition in part and awarded a sum of Rs.13,70,104/- as compensation to the claimants. Not satisfied with the same, the present appeal has been filed by the appellants/claimants seeking enhancement.



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4. The learned counsel appearing for the appellants/claimants submitted that the monthly income fixed by the Tribunal is on the lower side, which requires to be reconsidered by this Court. That apart, the amounts awarded under the heads of loss of consortium, loss of love and affection and loss of estate were also on the lower side and were 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***. Accordingly, he prays for appropriate enhancement in favour of the appellants.

5. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation under various heads, which are just and reasonable and the same does not require any enhancement. Accordingly, he prays for dismissal of the appeal.



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

7. The factum of the accident is not disputed by the parties and so also the liability. 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. In this regard, it is claimed by the claimants that the deceased was working as a loan man and was earning a sum of Rs.21,000/- per month. 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.15,000/- and adding future prospects at 25%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others***



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reported in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.18,750/-. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.12,500/- 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 arrived at Rs.12,500/- * 12 * 13 = Rs.19,50,000/-, which is worked out as follows :-

Loss of Income	Amount in Rs.
Notional income (Per month)	15,000
Add: Future Prospects (Rs.15,000 x 25%) (Per month)	3,750
	18,750
Less: Personal expenses (1/3 rd) (Rs.18,750/- x 1/3 rd) (Per month)	6,250
	12,500
Notional income (per annum) (Rs.12,500/- x 12)	1,50,000
Multiplier	13
Total	19,50,000



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8. Since no amount has been granted under the head “loss of love and affection”, this Court awards a sum of Rs.1,20,000/- under the said head by awarding a sum of Rs.40,000/- each to the appellants 2 to 4. Further, this Court is of the view that the amount of compensation awarded by the Tribunal under the heads loss of consortium, loss of estate and funeral expenses are just and reasonable and the same are confirmed.

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

S.No .	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Loss of dependency	13,00,104/-	19,50,000/- (enhanced)
2	Loss of Consortium	40,000/-	40,000/-
3	Loss of love and affection	-	1,20,000/-
4	Loss of Estate	15,000/-	15,000/-
5	Funeral Expenses	15,000/-	15,000/-
	Total	13,70,104/-	21,40,000/-



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10. When the claim petition was filed in the year 2018, the third appellant was aged about 15. Now, he should be aged about 21 years and is therefore, major. Though no application has been taken out to declare him as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the third appellant as major and discharges his mother Suganeswari from the guardianship. The Registry shall carry out the necessary amendments.

11. In the result, the Civil Miscellaneous Appeal is partly allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.13,70,104/-** to **Rs.21,40,000/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.179 of 2019 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 by the second respondent/Insurance Company,



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the Tribunal is directed to transfer the award amount directly to the bank of the appellants/claimants through RTGS as per the apportionment of the Tribunal, 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. There shall be no order as to costs in the present appeal.

15.12.2023

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

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To

1.The Special District Judge/Motor Accident Claims Tribunal, Salem.

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



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M.DHANDAPANI,J.,

sp

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