



WEB COPY



C.M.A.No.1164 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

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

C.M.A.No.1164 of 2020

1. Suba
2. Yuvasree
3. Jeevith

(Appellants 2 & 3 are *Suo motu* declared as major and their mother A1 Suba is discharged from guardianship of the appellants 2 & 3, vide order of this Court dated 29.11.2023 made in CMA.No.1164/2020)

...Appellants

Vs.

1. Santhi
2. M/s. United India Insurance Co. Ltd.,
No.2, Bhuvaneshwari complex,
Dr.Sankaran Road, Namakkal – 637 001.
3. Manikandan

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the judgment and decree dated 05.07.2019 passed in M.C.O.P.No.1537 of 2016 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Namakkal.



C.M.A.No.1164 of 2020

For Appellants : Mr.C.Thangaraju

For Respondents : No Appearance, for R1 & R3
Mr.M.J.Vijayaraghavan, for R2

JUDGEMENT

Challenging the judgment and decree dated 05.07.2019 made in M.C.O.P.No.1537 of 2016 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Namakkal, the claimants are before this Court.

2. The case of the appellants is that, on 04.02.2016 at about 7.50 a.m., when the deceased Masilamani was riding a Hero Honda motor cycle bearing Regn.No.TN-28-AM-2072 on Namakkal to Thuraiyur Main Road, near Perumpatty Bus Stop, one Private bus bearing Regn.No.TN-28-AL-6869 owned by the 1st respondent, insured with the 2nd respondent, driven by the 3rd respondent in a rash and negligent manner, hit the motor cycle driven by the deceased, due to which, the said Masilamani sustained grievous injuries all over his body and got admitted in the hospital, however, he subsequently passed away. Thereby, the appellants herein filed a claim petition claiming a compensation of Rs.30,00,000/-. After contest, the tribunal, vide impugned



C.M.A.No.1164 of 2020

judgment awarded a compensation of Rs.15,56,770/-. Aggrieved with the said order, the present appeal has been filed by the claimants seeking enhancement of the compensation fixed.

3. Learned counsel appearing for the appellants submitted that admittedly, the above said accident occurred solely due to the rash and negligent driving of the 3rd respondent, due to which, the husband of the 1st appellant and father of the 2nd and 3rd appellants lost his life. Further, though the accident is of the year 2016 and at the time of accident, the deceased was aged about 51 years and was working as a Welder and earning a sum of Rs.20,000/- per month, however, the tribunal had taken the income of the deceased as Rs.8,000/- alone, which is very meagre. That apart, no compensation was awarded under the head of loss of love and affection, which is contrary to 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*** and the compensation awarded under the other heads are also on lower side and the same has to necessarily be enhanced. Accordingly, he prayed for appropriate enhancement in favour of the



C.M.A.No.1164 of 2020

appellants.

WEB COPY

4. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prayed for dismissal of the appeal.

5. Heard the learned counsel for the appellants and the learned counsel appearing for the 2nd respondent and perused the materials available on record.

6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievances of the appellants/claimants is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the appellants that though the deceased earned a sum of Rs.20,000/- per month, however, without considering the same, the Tribunal has fixed the notional income at Rs.8,000/-. It has been the view of the courts that even a housewife is entitled to monthly



C.M.A.No.1164 of 2020

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.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 51 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 :-



C.M.A.No.1164 of 2020

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 (1/3 rd) (Rs.13,200/- x 1/3) (Per month)	4,400
	8,800
Notional income (per annum) (Rs.8,800/- x 12)	1,05,600
Multiplier	11
Total	11,61,600

7. A sum of Rs.40,000/- alone has been granted to the 1st appellant under the head of "loss of consortium", and no compensation was granted to the 2nd and 3rd appellants under the head of "loss of love and affection". Therefore, a sum of Rs.80,000/- shall be awarded under this head.

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



C.M.A.No.1164 of 2020

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of Income	7,74,444/-	11,61,600/- (enhanced)
Loss of Estate	15,000/-	15,000/-
Funeral Expenses	15,000/-	15,000/-
Loss of love and affection (Rs.40,000/- x 2)	-	80,000/-
Loss of consortium	40,000/-	40,000/-
Medical Bills	7,07,326/-	7,07,326/-
Transportation charges	5,000/-	15,000/-
Total	15,56,770/-	20,33,926/-

9. When the claim petition was filed in the year 2016, the 2nd appellant was aged about 14 years and the 3rd appellant was aged about 11 years. Now, the 2nd appellant should be aged about 21 years and the 3rd appellant should be aged about 18 years and are therefore, major. Though no application has been taken out to declare them 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 2nd and 3rd appellants as major and discharges their guardian M/s.Suba from the guardianship. The Registry shall carry out the necessary



C.M.A.No.1164 of 2020

amendments.

WEB COPY

10. The appeal is partly allowed and the impugned Award is modified by enhancing the compensation amount from **Rs.15,56,770/-** to **Rs.20,33,926/-**. The 2nd respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.1537 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 six (6) weeks from the date of receipt of a copy of this judgment. In the above said award amount, the 1st and 2nd appellants are entitled to a sum of Rs.8,13,570.40/- each and the 3rd appellant is entitled to a sum of Rs.4,06,785.20/-. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellants 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. There shall be no order as to costs in the present appeal.

29.11.2023

skt

Index

: Yes / No



C.M.A.No.1164 of 2020

Speaking Order : Yes / No
Neutral Citation Case : Yes / No

WEB COPY

To

- 1.The Motor Accidents Claims Tribunal / Additional District Court,
Namakkal.
- 2.The Section Officer,
V.R. Section, High Court, Madras.



WEB COPY



C.M.A.No.1164 of 2020

M.DHANDAPANI, J.

skt

C.M.A.No.1164 of 2020

29.11.2023