



WEB COPY



C.M.A.No.1225 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1225 of 2018

1.Shobana

2.Kiran

3.Minor Varun

(Minor 3rd appellant is represented
by his mother Shobana as a natural
guardian and next friend)

... Appellants

..Vs..

1.Prashanth

(set exparte before the Tribunal)

2.United India Insurance Company Limited

No.48, Arcot Road

Saligramam

Chennai-600 093.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 06.11.2017 made in M.A.C.T.O.P No.321 of 2016 on the file of the Motor Accident Claims Tribunal/ II Additional District Judge, Poonamallee.

For Appellants

: M/s. M.Malar

For Respondents

: No Appearance for R2

R1-Exparte before the Tribunal



C.M.A.No.1225 of 2018

JUDGMENT

WEB COPY This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 06.11.2017 passed by the Motor Accident Claims Tribunal / II Additional District Judge, Poonamallee in M.C.O.P No.89 of 2016.

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>
Pecuniary loss of income	15,13,380/- (17,200 – 1/3 = 11465 x 12 x 11)
Funeral Expenses	25,000/-
Loss of consortium and pain and suffering to wife	1,00,000/-
Loss of Love and affection and pain and suffering to the claimants 2 and 3	2,00,000/-



C.M.A.No.1225 of 2018

<i>Heads</i>	<i>Award Amount (Rs.)</i>
(Rs.1,00,000/- x 2)	
Total	18,38,380/-

4. The learned counsel appearing for the appellants mainly contended that the entire quantum of compensation awarded by the Tribunal is very low. The Tribunal has failed to award compensation under the head of future prospectus without following various judgments laid down by the Hon'ble Apex Court. The monthly income fixed by the Tribunal is very low. The Tribunal has also failed to award any compensation under the other heads namely loss of expectation of life, mental agony, loss of estate, damage to cloth and articles. Hence, he prays to enhance the award.

5. Though notice has been served to the 2nd respondent/Insurance Company, they had not entered appearance before this Court.

6. As seen from the impugned award, the Tribunal has not awarded any compensation towards loss of future prospectus and the appellants are



C.M.A.No.1225 of 2018

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 15% towards loss of future prospectus to the appellants.

7. As far as the multiplier is concerned, the Tribunal has rightly applied the 11 multiplier since the deceased was aged 52 years at the time of accident as per Ex.P7 Identity card of the deceased. On perusal of Ex.P9 salary certificate, it is seen that the deceased was working as Executive Officer in a private concern namely, Sivapriya Exim (P) Ltd., and was earning Rs.27,200/- per month. But, without giving due consideration to the year of the accident and the avocation of the deceased as Executive Officer, the Tribunal has wrongly assessed the notional monthly income of the deceased at Rs.17,200/-. Hence, this Court is of the considered view that it would be appropriate to fix Rs.27,200/- as notional monthly income of the deceased. Since the Appellants are wife and children, 1/3th will have to be deducted towards the personal expenses of the deceased. Accordingly,



C.M.A.No.1225 of 2018

the loss of dependency is modified from Rs.15,13,380/- to Rs.27,52,596/- as detailed below:

$$27,200 + 15\% \times 1/3 \times 12 \times 11 = \text{Rs.}27,52,596/-$$

8. The compensation awarded by the Tribunal towards loss of consortium, love and affection and funeral expenses is on the higher side in the considered view of this Court. As per the settled practice, the compensation awarded by the Tribunal towards loss of consortium is reduced to Rs.40,000/- from Rs.1,00,000/- and the compensation towards funeral expenses is reduced to Rs.15,000/- from Rs.25,000/- and towards love and affection reduced to Rs.80,000/- from Rs.2,00,000/- 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.

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



C.M.A.No.1225 of 2018

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Dependency (17200-1/3=11465 x 12 x 11	15,13,380/-	27,52,596/- (27,200 + 4,080 (15% future prospects)=31,280 - 1/3 rd deduction= 20853 x 12 x 11
Funeral Expenses	25,000/-	15,000/-
Loss of Consortium to wife	1,00,000/-	40,000/-
Love and affection to 2 nd and 3 rd appellants	2,00,000/-	80,000 /-
Loss of Estate	Nil	15,000/-
Total	18,38,380/-	29,02,596/- rounded off to Rs.29,02,600/-

10. In the result,

(i) This appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from 18,38,380/- to Rs.29,02,600/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation.



C.M.A.No.1225 of 2018

(ii) The second respondent Insurance company is directed to deposit the modified award amount i.e, Rs.29,02,600/- 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 MCOP.No.321 of 2016 within a period of six weeks from the date of receipt of a copy of this Judgment.

(iii) 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 and 2 along with accrued interest through RTGS within a period of two weeks thereafter.

(iv) Insofar as the minor Appellant no.3 is concerned, the Tribunal is directed to deposit the share of his award amount bearing fixed deposit in any one of the Nationalised Bank till he attains 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 minors. No costs.

13.02.2023

Index: Yes/No
Internet: Yes/No
uma



C.M.A.No.1225 of 2018

WEB COPY To

1.The Motor Accident Claims Tribunal/
II Additional District Judge, Poonamallee..

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



WEB COPY



C.M.A.No.1225 of 2018

A.A.NAKKIRAN, J.
uma

C.M.A.No.1225 of 2018

13.02.2023