



C.M.A.No.1614 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.11.2023**

CORAM:

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

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1.E.Sundariah

2.E.Shamala

3.E.Esther Rani

4.E.Kumar

5.E.Sudhakar

6.E.Raj

... Appellants

Vs.

1.M.Thillai Kumar

2.Reliance General Insurance Co. Ltd.,
No.6, Haddows Road, Nungambakkam,
Chennai – 600 034.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 09.01.2018 made in M.C.O.P.No.4303 of 2013 on the file of Motor Accident Claims Tribunal, (II Small Causes Court), Chennai.



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For Appellants : Mr.K.Varadha Kamaraj
For Respondents : Mr.R.Vijayagamoorthy [R1]
Mrs.G.Sukumari [R2]

JUDGEMENT

Assailing the decree and judgment 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 husband, daughters and son of the deceased T.Ramamma. On 26.11.2012, at about 07.30 hours, when the deceased was engaged in her usual work at the point of K.P.Park near Carbage godown, at that time, a JCB vehicle bearing Reg.No.TN 05 X 4975, which was owned by the first respondent and insured with the second respondent was operated by its driver without any signal and suddenly moved and turned into



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backside in a rash and negligent manner and endangering public safety and the bucket of the JCB dashed against the deceased's forehead and thereby, she died on the spot. Therefore, the appellants/claimants have filed a claim petition under Section 166 of Motor Vehicles Act, 1988, and Rule 3 of the Motor Vehicles Rules claiming compensation of Rs.20,00,000/- before the Motor Accident Claims Tribunal, (II Small Causes Court), Chennai in M.C.O.P.No.4303 of 2013.

3. Before the Tribunal, the appellants examined two witnesses viz., P.W.1 and P.W.2 and marked 11 documents viz., Ex.P.1 to Ex.P.11. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal, allowed the petition and awarded a sum of Rs.9,68,000/- as compensation to the claimants. Aggrieved by the said award dated 09.01.2018, the present appeal has been filed by the appellants/claimants seeking enhancement.



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4. The learned counsel appearing for the appellants submitted that, at the time of death, the deceased was employed as Mestry in the Corporation of Chennai and received a sum of Rs.14,200/- as salary. Though the salary receipt was marked as Ex.P.5, however, the employer was not examined. On the sole ground, the claim with regard to fixation of monthly income was rejected by the Tribunal. He further submitted that by fixing a sum of Rs.6,000/- as notional income and applying the multiplier of 13, the Tribunal awarded compensation towards loss of income, which is very meagre, which requires to be enhanced by this Court. Further, he submitted that, apart from the salary receipt, the appellants also marked bank passbook as Ex.P.9, in which, it has been clearly stated that the deceased employee received salary between Rs.8,000/- to Rs.12,000/-. Hence, he submitted that, by considering the same, this Court may fix the monthly income and grant appropriate compensation. It is also submitted that the Tribunal has not awarded any compensation towards loss of love and affection, which requires to be re-considered. Accordingly, he prays for allowing the appeal.



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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, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing on behalf of the parties and 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. It is claimed by the claimants that the deceased was working as a Mestry and was earned salary between Rs.8,000/- to Rs.12,000/- 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



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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.8,000/- and adding future prospects at 30%, 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.10,400/-. Deducting 25% towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.7,800/- per month and the deceased being aged about 49 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.7,800/- * 12 * 13 = Rs.12,16,800/-, which is worked out as follows :-



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Loss of Income	Amount in Rs.
Notional income (Per month)	8,000
Add: Future Prospects (Rs.8,000 x 30%) (Per month)	2,400
	10,400
Less: Personal expenses (25%) (Rs.10,400/- x 25%) (Per month)	2,600
	7,800
Notional income (per annum) (Rs.7,800/- x 12)	93,600
Multiplier	13
Total	12,16,800

8. The appellants 2 to 6 are entitled to a sum of Rs.20,000/- each under the head of loss of love and affection. Therefore, this Court awards a sum of Rs.1,00,000/- under this head. No amount has been granted under the head of loss of estate, hence, this Court awards a sum of Rs.15,000/- under this head.

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



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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of Income	9,12,600/-	12,16,800/- (enhanced)
Loss of Consortium	40,000/-	40,000/-
Loss of love and affection	-	1,00,000/-
Funeral Expenses	15,000/-	15,000/-
Loss of Estate	-	15,000/-
Total	9,67,600/-	13,86,800/-

10. The appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.9,67,600/-** to **Rs.13,86,800/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.4303 of 2013 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 four (4) weeks from the date of receipt of a copy of this judgment. The said award amount shall be apportioned amongst the appellants/claimants as per the Award of the Tribunal. On such deposit being made, the appellants/claimants are



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permitted to withdraw the award amount falling to their share, along with proportionate accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. The appellants/claimants are directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee has been produced by the claimants. There shall be no order as to costs in the present appeal.

01.11.2023

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

1.The Motor Accidents Claims Tribunal,
(II Small Causes Court),
Chennai.

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



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M.DHANDAPANI,J.,

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