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C.M.A.Nos.1367, 1375, 1394 & 1397 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.Nos.1367, 1375, 1394 & 1397 of 2023

1.Minor Kanthalakshmi
2.Minor Jayasri @ Annalakshmi
(Minors 1 and 2 are represented by their
maternal Grandmother Gowri as Natural
guardian)

...Appellants
in C.M.A.Nos.1367 & 1375 of 2023

Kavitha

...Appellant
in C.M.A.Nos.1394 & 1397 of 2023

Versus

1.Nelaveli Naresh

(R1 remained *ex-parte* before the Tribunal)

2.The New India Assurance Co.Ltd.,
Motor Third Party Claims,
No.232, Bombay Mutual Building,
6th Floor,
N.S.C. Bose Road,
Chennai – 600 001.

... Respondents in all C.M.As



C.M.A.Nos.1367, 1375, 1394 & 1397 of 2023

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 23.04.2022 passed in M.A.C.T.O.P.Nos.152, 146, 147 & 151 of 2023 by the Motor Accident Claims Tribunal, II Court of Causes Court, Chennai.

In all C.M.As

For Appellants : Mr.A.Subadra
For R2 : Mr.J.Chandran

COMMON JUDGMENT

The above appeals have been filed challenging the common award passed in respect of four claim petitions filed by the dependants of the deceased, who died in the accident that took place on 30.09.2018.

2.The appellants/claimants in all the cases had filed the claim petitions stating that on 30.09.2018 at about 04.30 a.m., when all the deceased were travelling in a Scorpio car bearing Regn No.TN-11-Y-4848 from Chennai to Trichy, the driver of the lorry bearing Regn No.AP-26-TJ-0036, insured with the 2nd respondent herein, who was proceeding in a same direction applied sudden brake and moved from one track to the other track without any signal; that as a result of which, the Scorpio car dashed against the lorry, which resulted in causing fatal injuries to all the deceased.



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3.The 1st respondent-owner of the lorry remained *ex-parte* before the Tribunal in all the claim petitions.

4.The 2nd respondent herein resisted the claim petitions stating that the accident did not take place due to the rash and negligent driving by the driver of the offending vehicle; that the driver of the offending vehicle did not have valid driving license and in any case, the claim made by the appellants/claimants was excessive and prayed for dismissal of the claim petitions.

5.Before the Tribunal, the appellants examined P.W.1 & P.W.2 and marked Exs.P1 to P25 in support of their claim petitions. The 2nd respondent neither examined any witness nor marked any document.

6.The Tribunal after considering the oral and documentary evidence, awarded a compensation in the following manner:-

- a) Rs.23,07,400/- for the appellants in C.M.A.No.1367 of 2023
- b) Rs.18,67,500/- for the appellants in C.M.A.No.1375 of 2023
- c) Rs.7,05,500/- for the appellant in C.M.A.No.1394 of 2023
- d) Rs.23,07,400/- for the appellant in C.M.A.No.1397 of 2023



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7.The learned counsel for the appellants submitted that, in all the cases, the notional income fixed by the Tribunal is meagre and hence, the same requires enhancement. Further as regards the claim involved in C.M.A.Nos.1367 and 1375, the Tribunal had not awarded compensation under the head loss of love and affection for one of the appellant and prayed for enhancement of compensation.

8.Since the 1st respondent remained *ex-parte* before the Tribunal, the learned counsel for the appellants requested this Court to dispense with notice to the 1st respondent and he had also made and endorsement to that effect. Hence, notice to the 1st respondent is dispensed with.

9.The learned counsel for the 2nd respondent per contra submitted that the award of the Tribunal is just and reasonable and no interference is called for and prayed for dismissal of the appeal.

10.The only question involved in the instant appeal is whether the Tribunal had awarded just and reasonable compensation?



a) C.M.A.No.1367 of 2023

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11(a).On perusal of the records, it is seen that the deceased, one Vijayaragavan, the father of the appellants was aged 36 years at the time of accident and was doing the job of welding work. P.W.2 was examined by the appellants to prove the avocation of the deceased. However, no document was produced to establish the income earned by the deceased. Considering the year of accident, age, avocation of the deceased and number of dependancy, it would be just and reasonable to fix the notional income at Rs.16,000/- per month. Further, since the deceased was 36 years at the time of accident, the appellants are entitled for 40% enhancement towards future prospects. The applicable multiplier is 15. After deducting 1/3rd towards personal expenses the award under the head loss of dependancy has to be as follows:

$$\text{Rs.22,400/- (Rs.16,000 + 40\%) X 12 X 15 X 2/3 = Rs.26.88,000/-}$$

The award under the head loss of love and affection is enhanced to Rs.88,000/- at the rate of Rs.44,000/- each. The amount awarded under other heads is just and reasonable and the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	22,31,881	26,88,000	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Loss of Love and Affection	44,000	88,000	Enhanced
4.	Funeral Expenses	16,500	16,500	Confirmed
	Total	23,07,381 rounded off to 23,07,400	28,07,500	Enhanced by Rs.5,00,100/-

11(b).With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.23,07,381/- is hereby enhanced to Rs.28,07,500/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellants are entitled to share the award amount equally. Since the



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appellants are minors, the award amount shall be deposited in any one of the Nationalised Bank, till the minors attain majority. The grand mother of the appellants/guardian is permitted to withdraw the accrued interest once in three months. The appellants are directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

b) C.M.A.No.1375 of 2023

12(a).In the instant appeal, the Tribunal had fixed the notional income of the deceased at Rs.10,000/-. The appellants established the fact that the deceased was doing water can business along with other family members. However, the appellants had not produced any document to substantiate their claim. The appellants are minor daughters of the deceased Gomathi, the mother of the appellants. Considering the fact that the appellants have established that the deceased was doing water can business, the year of accident and the number of dependants, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.13,000/- per month. The deceased was aged about 32 years at the time of accident and the appellants are entitled for 40% enhancement towards future prospects. The applicable multiplier is 16. After deducting 1/3rd towards personal



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expenses the award under the head loss of dependancy has to be as

follows:

$$\text{Rs.18,200/- (R.13,000 + 40\%) X 12 X 16 X 2/3 = Rs.23,29,600/-}.$$

The award under the head loss of love and affection is enhanced to Rs.88,000/- at the rate of Rs.44,000/- each. The amount awarded under other heads is just and reasonable and the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	17,92,001	23,29,600	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Loss of Love and Affection	44,000	88,000	Enhanced
4.	Funeral Expenses	16,500	16,500	Confirmed
	Total	18,67,501 rounded off to 18,67,500	24,49,100	Enhanced by Rs.5,81,600/-



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12(b).With the above modification, this Civil Miscellaneous

Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,67,501/- is hereby enhanced to Rs.24,49,100/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellants are entitled to share the award amount equally. Since the appellants are minor, the award amount shall be deposited in any one of the Nationalised Bank, till the minors attain majority. The grand mother of the appellants/guardian is permitted to withdraw the accrued interest once in three months. The appellants are directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

c) C.M.A.No.1394 of 2023

13(a)In the instant case, the deceased is a minor aged about 11 years. The Tribunal had fixed the notional income as Rs.7000/- and had deducted 50% towards personal expenses, which is erroneous. This Court



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is of the view that since the accident is of the year 2018 and the deceased is a minor, it would be just and reasonable to fix the annual notional income at Rs.60,000/-. The multiplier applicable is 15. Hence, the compensation under the head loss of dependancy would be Rs.9,00,000/-. The award under other heads is just and reasonable and the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependancy	6,30,000	9,00,000	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Loss of Love and Affection	44,000	44,000	Confirmed
4.	Funeral Expenses	16,500	16,500	Confirmed
	Total	7,05,500	9,75,500	Enhanced by Rs.2,70,000/-

13(b).With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,05,500/- is hereby enhanced to Rs.9,75,000/-, together with interest at 7.5% per annum (excluding the default period, if any) from the



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date of petition till the date of deposit. The 2nd respondent/Insurance

Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant is permitted to withdraw the entire award amount now determined by this Court, along with interest and costs, less the amount already withdrawn, if any. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

d) C.M.A.No.1397 of 2023

14(a).In the instant case, the claimant is the wife of the deceased. The deceased was aged about 39 years at the time of accident. P.W.1- wife of the deceased had deposed before the Tribunal that the deceased was doing welding work and earning a sum of Rs.50,000/- per month. However, no document was filed before the Tribunal to establish the income of the deceased. Considering the fact that the deceased was the bread winner, his age, year of accident and his avocation, this Court is of the view that, it would be just and reasonable to fix a sum of Rs.16,000/- as notional income of the deceased. Since the deceased was 39 years, at



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the time of accident, the appellant would be entitled for 40%

enhancement towards future prospects. The multiplier applicable is 15.

After deducting 1/3rd towards personal expenses, the award under the head loss of dependancy has to be as follows:

$$\text{Rs.22,400/- (Rs.16,000 + 40\%) X 12 X 15 X 2/3 = Rs.26.88,000/-}$$

The award under other heads is just and reasonable and the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	22,31,881	26,88,000	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Loss of Love and Affection	44,000	44,000	Confirmed
4.	Funeral Expenses	16,500	16,500	Confirmed
	Total	23,07,381 rounded off to 23,07,400	27,63,500	Enhanced by Rs.4,56,100/-



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14(b).With the above modification, this Civil Miscellaneous

Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.23,07,381/- is hereby enhanced to Rs.27,63,500/-, together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant is permitted to withdraw the entire award amount now determined by this Court, along with interest and costs, less the amount already withdrawn, if any. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

12.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Motor Accident Claims Tribunal,
II Court of Small Causes Court, Chennai.

2.The Section Officer,
VR Section, High Court, Madras.



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SUNDER MOHAN, J.

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