



C.M.A.No.2024 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2023

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.2024 of 2018

1.Rathna
2.M.Murthy
3.M.Parimala
4.M.Sakthivel

...Appellants

Vs

1.Shivaji Patro

2.ICICI Lombard General Insurance Company Ltd.,
ICICI Lombard House,
414, Veer Sharkar Marg,
Near Siddhi Vinayak Temple,
Prabhadevi, Mumbai – 400 025.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.04.2016 made in M.C.O.P.No.1936 of 2014 on the file of the Motor Accidents claims Tribunal, Special District Judge, Dharmapuri.

For Appellants : Mr.S.Sathiaseelan

For R2 : Mr.R.Sreevidhya



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 20.04.2016 made in M.C.O.P.No.1936 of 2014 on the file of the Motor Accidents claims Tribunal, Special District Judge, Dharmapuri.

2.The appellant/claimant filed M.C.O.P.No.1936 of 2014 on the file of the Motor Accidents claims Tribunal, Special District Judge, Dharmapuri, claiming a sum of Rs.50,00,000/- as compensation for the death of one Muniappan, who died in the accident that took place on 30.09.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.13,84,000/- along with interest at the rate of 7.5% as compensation to the appellants/claimants under following heads:



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S.No	Description	Amount awarded by Tribunal (Rs)
1.	Loss of Income	11,34,000
2.	Loss of Consortium	1,00,000
3.	Loss of Love & Affection	1,00,000
4.	Funeral Expenses	25,000
5.	Transportation	25,000
	Total	13,84,000

4. Aggrieved over the award passed by the Tribunal, the appellants/claimants filed the present appeal challenging the quantum of compensation.

5. Learned counsel appearing for the appellant would submit that the appellants/claimants are the wife and three children of the deceased. As per the postmortem report, the age of the deceased was 45 years at the time of accident. The Tribunal fixed the notional income of the deceased at Rs.9,000/-, in the absence of any income proof for the accident occurred in the year 2013, which is very meager. The Hon'ble Supreme Court in the case of *Syed Sadiq vs. Divisional Manager, United India Insurance* reported in *2014 1 TNMAC 459 (SC)*, awarded a sum of Rs.6,500/- for the vegetable vendor for the accident took place in the year 2008. In the present case, the deceased was working as



building sub-contractor and agriculturist and therefore, he prayed to fix the notional income of the deceased as Rs.13,000/- by considering the cost inflation index, though initially he suggested to award a sum of Rs.20,000/-.

6.On the other hand, the learned counsel appearing for the 2nd respondent would submit that a sum of Rs.12,500/- would be just and fair to fix as a notional income of the deceased. She would further submit that the age of the deceased at the time of accident was 50 years as per the ration card. However, the Tribunal took the age of the deceased as 45 years as per the postmortem report and awarded compensation.

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

8.Taking into consideration the submission made by the learned counsel appearing for either parties and considering the nature of avocation of the deceased and the cost inflation index, this Court is inclined to fix the notional income of the deceased at Rs.12,500/-. Though as per the ration card the age of



the deceased was 50 years, the Tribunal considering the postmortem report took

the age of the deceased as 45 years, which do not need any interference.

Further, for the age of 45 years the multiplier applicable is 14 as held by the Hon'ble Supreme Court in the case of *Sarla Verma & others vs. Delhi Transport Corporation & another* reported in *2009 (2) TNMAC 1 SC*. As held by the Hon'ble Supreme Court in the case of *National Ins. Co. v. Pranay Sethi & others* reported in *2017(2)TNMAC 609 (SC)*, the future prospect for the age group of 45 years is 25%. Since there are four legal heirs for the deceased, 1/4th has to be deducted towards personal expenses. Hence, the loss of income computed as follows:

$$\text{Rs.12500 /-} - 1/4 = \text{Rs.9375/-}$$

$$\text{Rs.9375/-} + 2343.75 \text{ (25\% of Rs.9375)} \times 12 \times 14 = \text{Rs.19,68,750/-}.$$

9.The Tribunal has awarded a sum of Rs.1,00,000/- under the head of loss of consortium, which is on the higher side. As held by in the case of *Pranay Sethi* stated supra, the wife is entitled to a sum of Rs.40,000/- towards loss of consortium and the same is re-fixed as Rs.40,000/-. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection for the children and the same is meager. As held by the Hon'ble Supreme Court in the case of *Magma*



General Insurance Company Ltd., vs. Nanu Ram Alias Chuhru Ram and

others reported in ***(2018) 18 SCC 130***, the children are entitled for a sum of Rs.40,000/- towards parental consortium and hence, the same is re-fixed as a sum of Rs.40,000/- each to the appellants 2 to 5. Further, the Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses and transportation respectively, which is on the higher side and therefore, this Court re-fix the amount awarded towards funeral expenses at a sum of Rs.15,000/- and a sum of Rs.10,000/- towards transportation. The Tribunal has not awarded any amount towards loss of estate and this Court award a sum of Rs.15,000/- towards loss of estate. Thus, the compensation awarded by the Tribunal is re-determined as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of Income	11,34,000	19,68,750
2.	Loss of consortium for spouse	1,00,000	40,000
3.	Loss of parental consortium	1,00,000	1,20,000
4.	Funeral expenses	25,000	15,000
5.	Transportation	25,000	10,000
6.	Loss of Estate	-	15,000
	Total	13,84,000	21,68,750



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10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,84,000/- is hereby enhanced to Rs.21,68,750/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellants/claimants are directed to pay necessary court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the modified award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. Thereafter, the Tribunal is directed to transfer the award amount to the appellants/claimants by way of RTGS to their bank account directly, within a period of three weeks from the deposit being made or from the date of furnishing the RTGS particulars by the appellants/claimants, whichever is later. On such deposit, the 1st appellant is permitted to withdraw a sum of Rs.12,68,750/- and the appellants 2 to 4 are permitted to withdraw a sum of Rs.3,00,000/- each along with proportionate interest. No costs.

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Index : Yes / No

Neutral Citation : Yes / No

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KRISHNAN RAMASAMY,J.

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To:

The Motor Accident Claims Tribunal Cum
Special District Judge, Dharmapuri.

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