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C.M.A.No.1740 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

C O R A M

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

C.M.A.No.1740 of 2021

1.Vijayalakshmi
2.Bhuvaneswari
3.Aruna Iyappan
4.Sakthi

...Appellants

Vs

1.Jagadees.

2.The Manager,
Reliance General Insurance Company Ltd.,
Bi 10/4/4, 2nd Floor,
Thana Plaza, South Bye Pass Road,
Vannarapettai,
Tirunelveli – 627 003.

3.Rajkumar

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988, to modify the award and decree dated 18.02.2021 made in M.C.O.P.No.272 of 2018 on the file of the Motor Accidents claims Tribunal, (Court of Sessions Judge), Mahila Court, Perambalur.



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For Appellants : Mr.A.Muthukumar
For R1 : Ms.C.Bhuvana Sundari
For R2 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed seeking to modify the award and decree dated 18.02.2021 made in M.C.O.P.No.272 of 2018 on the file of the Motor Accidents claims Tribunal, (Court of Sessions Judge), Mahila Court, Perambalur.

2.The appellants/claimants filed M.C.O.P.No.272 of 2018 on the file of the Motor Accidents claims Tribunal, (Court of Sessions Judge), Mahila Court, Perambalur, claiming a sum of Rs.50,00,000/- as compensation for the death of one Sathishkumar, who died in the accident that took place on 19.10.2017.

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.12,90,000/- along with interest at the rate of 7.5%



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as compensation to the appellants/claimants under following heads:

S.No	Description	Amount awarded by Tribunal (Rs)
1.	Loss of Dependency	12,09,000
2.	Loss of Estate	15,000
3.	Funeral Expenses	15,000
4.	Medical Expenses	50,400
	Total	12,90,000

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 appellants/claimants would submit that the appellants/claimants are the mother and sisters of the deceased. The accident took place on 19.10.2017 and at the time of accident, the deceased was aged about 23 years. The deceased was working as Associate Engineer and he was earning Rs.16,800/- per month. The Tribunal fixed the notional income of the deceased at Rs.8,000/-, without considering the salary certificate of the deceased, which is very meager. Therefore, he would contend that considering Ex.P14/salary concern letter, the Tribunal ought to have awarded a sum of Rs.16,800/- as notional income of the deceased. He would further submit that



the Tribunal has not awarded any amount towards Transportation and love and affection. Hence prayed to allow the present appeal.

6.On the other hand, learned counsel appearing for the 2nd respondent/Insurance Company would submit that as per Ex.P14/salary concern letter, the salary of the deceased is only Rs.13800/- after deducting other conveyance. Therefore, the notional income can be fixed only as Rs.13,800/-.

7.In reply, learned counsel appearing for the appellants/claimants would submit that the medical allowance provided for the deceased by his company along with his salary was not only for the deceased but also for his family therefore, the same should not be reduced. Even deducting 50% of the medical allowance the salary would come around Rs.14,400/- and the same may be fixed as notional income.

8.Learned counsel appearing for the respondent/Insurance Company would submit that a sum of Rs.14,000/- would be just and fair to fix as a notional income.



9. Heard the learned counsel appearing for the appellants/claimants as well as the 2nd respondent/Insurance Company and perused the materials available on record.

10. Taking into consideration the submission made by the learned counsel appearing for either parties and considering Ex.P14/salary concern letter, this Court is inclined to fix the notional income of the deceased at Rs.14,000/-. Further, for the age of 23 years the multiplier applicable is 18 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 23 years is 40%. Since the 1st appellant is the only dependent of the deceased 1/2 has to be deducted towards personal expenses and hence, the loss of dependency computed as follows:

$$\text{Rs.14000/-} + 5600 \text{ (40\% of Rs.14000)} \times 12 \times 18 \times 1/2 =$$

Rs.21,16,800/-.



11.The Tribunal has not awarded any amount towards transportation and loss of love and affection. As held by *Pranay Sethi case (cited supra)* the mother of deceased is entitled for a sum of Rs.40,000/- towards filial consortium and hence, this Court award a sum of Rs.40,000/- towards filial consortium for the 1st appellant. Further, this Court award a sum of Rs.20,000/- each towards loss of love and affection to the appellants 2 to 4. Towards transportation a sum of Rs.10,000/- is awarded and the compensation awarded by the Tribunal under all other heads are just and fair and the same stands confirmed. 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 Dependency	12,09,000	21,16,800
2.	Loss of Estate	15,000	15,000
3.	Funeral Expenses	15,000	15,000
4.	Medical Expenses	50,400	50,400
5.	Transportation	-	10,000
6.	Filial Consortium	-	40,000
7.	Loss of Love and Affection	-	60,000
	Total	12,90,000	23,07,200

12.In the result, this Civil Miscellaneous Appeal is allowed and the



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compensation awarded by the Tribunal at Rs.12,90,000/- is hereby enhanced to Rs.23,07,200/- 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. Therafter, the Tribunal is directed to transfer the award amount to the 1st appellant/1st claimant by way of RTGS to their bank account directly, within a period of three weeks from the deposit being made or from date of furnishing the RTGS particulars by the 1st appellant/1st claimant, whichever is later. On such deposit, the 1st appellant is permitted to withdraw the entire award amount along with interest. No costs.

14.07.2023

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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KRISHNAN RAMASAMY,J.

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To:

The Motor Accident Claims Tribunal
(Court of Sessions Judge), Mahila Court,
Perambalur.

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14.07.2023