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C.M.A.No.3900 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3900 of 2019

1.Pottal
2.Sudha
3.Kavitha
4.Sumathi

... Appellants

..Vs..

1.P.Seeni Ganesan
2.The United India Insurance Company Limited
1170, Mettur Road
II Floor, Muthiah Complex
Erode-638 011.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 07.12.2018 made in M.C.O.P No.236 of 2017 on the file of the Motor Accident Claims Tribunal/ Special District Judge (To Deal with MCOP Cases), Erode.

For Appellants : Mr.C.E.Pratap

For Respondents : Mr.D.Bhaskaran for R2

No Appearance for R1



C.M.A.No.3900 of 2019

JUDGMENT

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This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 07.12.2018 passed by the Motor Accident Claims Tribunal / Special District Judge (To Deal with MCOP Cases), Erode, in M.C.O.P No.236 of 2017.

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	2,58,000/- (6500 – 1/3 = 4300 x 12 x 5)
Love and Affection	75,000/-
Funeral Expenses	15,000/-



C.M.A.No.3900 of 2019

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of Consortium	40,000/-
Transportation	10,000/-
Total	3,98,000/-

4. The learned counsel appearing for the appellants submitted that the deceased was doing all types of coolie works and also doing seasonal business and purchase and sale of agricultural products from the agriculturists on commission basis and was earning a monthly income of Rs.15,000/-. However, the Tribunal has erred in fixing the monthly income of the deceased as Rs.6,500/- and no amount was added towards “ Future Prospects”. Further, he submitted that as per Ex.P3 Postmortem Report, the age of the deceased was 60 years at the time of accident, but the Tribunal has taken the age of the deceased as 67 years by solely relying upon Ex.P6 Aadhar Card of the 1st appellant and failed to award any amount towards future prospects, which is erroneous in law. He further submitted that the compensation awarded under the other heads is also very meagre and hence, prayed for enhancement of compensation.



C.M.A.No.3900 of 2019

5. The learned counsel appearing for the second respondent/ insurance company submitted that after considering the oral and documentary evidence record, the Tribunal has awarded a just and reasonable compensation and therefore, the award passed by the Tribunal does not warrant any interference by this court.

6. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent/Insurance Company and also perused the materials on record.

7.The main contention of the learned counsel for the appellants is that the Tribunal has wrongly fixed the age of the deceased as 67 years and consequently erred in awarding any amount towards future prospects. On perusal of Ex.P3 Postmortem certificate, the age of the deceased was approximately mentioned as 60 years. Except the said document, any other document has not been filed by the claimants to prove the age of the deceased. In the absence of any such proof, based on the evidence of PW1 and Ex.P6 Aadhar card of the 1st appellant, the Tribunal has rightly fixed the age of



C.M.A.No.3900 of 2019

the deceased as 67 years at the time of accident. Insofar as the compensation towards future prospects is concerned, as seen from the impugned award, following the decision of Hon'ble Supreme Court in *Pranay Sethi* case, the Tribunal has not awarded any compensation towards loss of future prospectus since the age of the deceased was 67 at the time of the accident and hence, this Court does not warrant any interference on the said head.

8. The Tribunal has rightly applied the 5 multiplier since the deceased was aged 67 years at the time of accident. The Tribunal has assessed the notional monthly income of the deceased as Rs.6,500/- which is reasonable one. Further, the Tribunal has awarded a compensation of Rs.25,000/- each under the head of love and affection to the appellants 2 to 4 being the daughters of the deceased, which is very meagre. Hence, this Court is inclined to award a sum of Rs.40,000/- each to the appellants 2 to 4 towards love and affection. The Tribunal has erroneously failed to award any compensation towards loss of estate which the appellants 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. The Tribunal has



C.M.A.No.3900 of 2019

also failed to award any compensation towards damages and hence, this Court is inclined to award a sum of Rs.5,000/- towards damages and clothing.

9. Insofar as the quantum of compensation awarded by the Tribunal under the heads loss of consortium, transportation and funeral expenses are concerned, the same is a just compensation in the considered view of this Court.

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

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Pecuniary Loss of Income (6500 – 1/3 = 4300 x 12 x 5)	2,58,000/-	2,58,000/-
Loss of Love and Affection	75,000/ -	1,20,000/-
Funeral Expenses	15,000/ -	15,000/-
Loss of Consortium	40,000/ -	40,000/-



<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Transportation	10,000/-	10,000 /-
Loss of Estate	Nil	15,000/-
Damages to clothing and articles	Nil	5,000/-
Total	3,98,000/-	4,63,000/-

11. In the result,

(i) This appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from 3,98,000/- to Rs.4,63,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation.

(ii) The second respondent Insurance company is directed to deposit the modified award amount i.e, Rs.4,63,000/- 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.236 of 2017 within a period of six weeks from the date of receipt of a copy of this Judgment.



C.M.A.No.3900 of 2019

WEB COPY

(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 to 4 along with accrued interest through RTGS within a period of two weeks thereafter. No costs.

09.02.2023

Index:Yes/No

Internet:Yes/No

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To

1.The Motor Accident Claims Tribunal/
Special District Judge (To Deal with MCOP Cases), Erode.

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



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C.M.A.No.3900 of 2019

A.A.NAKKIRAN, J.
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C.M.A.No.3900 of 2019

09.02.2023