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C.M.A.No.3373 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2023

CORAM:

THE HON'BLE Mr. JUSTICE A.A.NAKKIRAN

C.M.A.No.3373 of 2019

1. Vijaya

2. Minor Bavithra

3. Minor Madhumitha

4. Minor Krishnaveni

5. Rasammal

Minor appellants are represented
by their Mother guardian/1st appellant

... Appellants

Vs.

1. S.Perumal

2. Royal Sundaram Alliance Insurance Co.Ltd,
45 & 46, Sundaram Towers,
Whites Road,
Chennai.

3. R.Nagaraj

4. Bajaj Alliance General Insurance Company Limited,
No.11, Peoples Park,
Government Arts College Road,
Coimbatore.

... Respondents



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Prayer:Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree dated 31.01.2012 passed in M.C.O.P.No.150 of 2008 on the file of the Motor Accidents Claims Tribunal/Principal District Judge, Namakkal.

For Appellants : Mr.Sathishkumar
for Mr.C.Thangaraju

For R1 : “No such person”
Endorsed by Postal Department

For R2 : Mr.E.Rajadurai
for Mr.M.B.Gopalan

For R3 : No appearance

For R4 : Mr.S.Arunkumar

JUDGEMENT

This appeal has been filed by the claimants having been dissatisfied with the quantum of compensation by the impuged award dated 31.01.2012 passed in M.C.O.P.No.150 of 2008 on the file of the Motor Accidents Claims Tribunal/Principal District Judge, Namakkal.



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2. The Motor Accidents Claim Tribunal, under the impugned award, has awarded compensation of Rs.7,90,000/- together with interest and costs to the Appellants/claimants, which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of dependency (Rs.5000x2/3 x 12 x 18)	7,20,000/-
Love and affection	50,000/-
Consortium	10,000/-
Funeral expenses	10,000/-
Total	7,90,000/-

3. Before the Tribunal, the appellants/claimants have filed five documents which were marked as Ex.P1 to Ex.P5 and examined two witnesses. On the side of respondents, three witnesses were examined as R.W.1 to R.W.3 and three documents were marked as Exs.R1 to R3.

4. Learned counsel appearing for the appellants contended that the deceased was running a mobile snack shop and he was aged about 26 years at the time of accident and was earning a sum of Rs.6,000/- per month. The

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Tribunal erroneously fixed a sum of Rs.5,000/- as monthly income of the deceased, which is meager amount. The Tribunal has not granted any amount towards the loss of estate. Further, he submitted that loss of love and affection to the minor children awarded by the Tribunal is extremely low, especially when the children need the guidance, affection and moral support of the father and therefore, that should be adequately compensated.

5. As far as the negligence aspect is concerned, though the Tribunal found that the lorry had been parked in “no parking area”, and also without following traffic rules, had erroneously come to the conclusion that the deceased was responsible for causing the accident and fixed the contributory negligence on the part of the deceased at 50%. Further, the compensation awarded under the heads, namely funeral expenses, loss of love and affection and consortium are meager. Hence, the learned counsel for the claimants prayed for enhancement of compensation amount awarded by the Tribunal.



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6. The learned counsel for the respondents 2 and 4 submitted that the appellants have not let in any material evidence to prove the income of the deceased, as the deceased was earning a sum of Rs.6,000/- per month at the time of accident. In the absence of material evidence, the Tribunal has fixed a sum of Rs.5,000/- as monthly income, which is not meagre. The contributory negligence fixed on the deceased by the Tribunal at 50% is correct. The amounts awarded by the Tribunal under other heads are not meagre. The Tribunal awarded just and fair compensation which need not be interfered with. Thus, the learned counsel for R2 and R4 prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellants as well as the respondents 2 and 4 and perused the entire materials on record.

8. As pointed out, the accident had occurred in the year 2006. At the time when the deceased died, the children were badly in need of support of the father, for their proper well-being growth and development. When they have lost the father at their very critical ages, it is necessary that the loss of love and affection has to be adequately compensated with. Therefore, the compensation



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towards loss of love and affection is enhanced to Rs.1,60,000/- (Rs.40,000 x 4) from Rs.50,000/-. The loss of consortium to appellants is enhanced to Rs.40,000/- from Rs.10,000/-.

9. As seen from the impugned award, the Tribunal has not awarded any compensation towards loss of estate. As per the judgment of the Honourable Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others* reported in 2017(2) TN MAC 609 (SC), Rs.15,000/- has to be awarded towards loss of estate. Accordingly, the same is hereby awarded. As per the said judgment in Pranay Sethi's case, the funeral expenses is awarded at Rs.15,000/-.

10. As seen from the impugned award, the Tribunal has not awarded any compensation towards loss of future prospects, which the appellants/claimants are legally entitled to as per the said Judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi & others* reported in 2017 (2) TN MAC 609 (SC). Accordingly, this Court grants 40% towards loss of future prospects to the Appellants. Based on the aforesaid



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observations the following formula is adopted for fixing the income of the deceased:

Monthly Income :

Rs.5,000 + Rs.2000(40% of Rs.5000) = Rs.7,000/-

Deduction of Personal expenses ($\frac{1}{4}$)

Rs.7,000 - Rs.1750 = Rs.5250/-

Annual Income

Rs.5250/- x 12 x 17 (Multiplier) = Rs.10,71,000

11.For the foregoing reasonings, the compensation awarded by the Tribunal is modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
Loss of dependency	7,20,000/-	10,71,000/-
Love and affection	50,000/-	1, 60,000/-
Consortium	10,000/-	40,000/-
Funeral expenses	10,000/-	15,000/-
Loss of Estates	-	15,000/-
Total	7,90,000/-	13,01,000/-



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12.In the result,

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(i) This appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from Rs.7,90,000/- to Rs.13,01,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation.

(ii) The first and second respondents herein are directed to deposit the 50% of their liability ie Rs.6,50,500 /- jointly and severally along with interest at the rate of 7.5% per annum and costs, after deducting the amount if any, already deposited, if any, to the credit of MCOP.No.150 of 2008 within a period of six weeks from the date of receipt of a copy of this Judgment. It is needless to state that the appellants/claimants shall pay necessary Court fee for the enhanced compensation amount before receiving the copy of this judgment.

(iii) On such deposit being made, and in line with the judgment of the *Hon'ble Division Bench of this Court in C.M.A.No.428 of 2016 dated 11.03.2016 reported in 2016(2) LW 561 [The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and Others]* the Tribunal is directed to transfer the respective shares of award amount as per the



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ratio apportioned by the Tribunal directly to the bank account of the 1st and 5th appellants, along with accrued interest through NEFT/RTGS within a period of two weeks thereafter.

(iv) Insofar as the minor Appellants 2, 3 & 4 are concerned, the Tribunal is directed to deposit their respective shares of their award amount in an interest bearing fixed deposit scheme in any one of the Nationalised Bank till they attain majority and the first Appellant/mother of the minors is permitted to withdraw the interest accrued once in six months for the welfare of the minors. No costs.

28.04.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

1. The Principal District Judge,
Motor Accidents Claims Tribunal, Namakkal.

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



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A.A.NAKKIRAN, J.

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