



C.M.A.No.3661 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :10.02.2023

Judgment Pronounced on :24.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3661 of 2021

1.Gantharoobi

2.Purusothaman

3.Suganthi

4.Sathya

... Appellants

vs.

1.Senthilkumar

2.United India Insurance Company Limited,
Kallakurichi

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the M.C.O.P.No.19 of 2017 dated 21.03.2019 by the Motor Accident Claims Tribunal at Kallakurichi / III Additional District Judge, Kallakurichi.

For Appellants : Mr.V.Gunasekar

For R1 :No appearance

For R2 : Mr.J.Michael Visuvasam



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JUDGMENT

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The claimants are the appellants herein seeking enhancement of compensation of the award made in M.C.O.P.No.19 of 2017 dated 21.03.2019.

2. For the sake of convenience the parties are referred to as per ranking before the Tribunal.

3. The factum of the accident, the manner of the accident and rash and negligence driving on the part of the driver of the offending vehicle, are not disputed and hence the findings rendered by the Tribunal are hereby confirmed.

4. During the trial the 1st claim petitioner was examined as P.W.1 and occurrence witness is examined as P.W.2 and the office of the employee is examined as P.W.3 and Exs.P1 to P18 were marked. On behalf of the respondents, no oral or documentary evidence are perused.

5. Heard both on the quantum of compensation.



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6. Perusal of the award shows that, based upon Ex.P8–Salary Slip, the tribunal has taken the net salary of the deceased i.e. Rs.10,061 /– as his monthly income. Further, as per service records Ex.P18, the deceased was aged about 57 at the time of the accident and therefore, the claims tribunal has rightly adopted multiplier '9' following S.V's case and as there are 4 dependents, 1/4th deduction was made towards personal and living expenses. Accordingly, a sum of Rs.8,14,868/– was awarded towards loss of dependency.

7. In addition, the claims tribunal has awarded Rs.25,000/– towards funeral expenses; Rs.20,000/– towards loss of consortium; and Rs.10,000/– each to the claim petitioners 2 to 3, towards loss of love and affection. In all, a sum of Rs.8,89,968/– was awarded and after deducting 15% of the same towards contributory negligence, Rs.7,56,500/–, was awarded.

8. The learned counsel for the claimants could draw my attention to Ex.P8 and Ex.P18 and submit that the claims tribunal has not considered the future prospects of the deceased. He would further submit that the compensation awarded under the other heads, is also low.



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9. Perused Ex.P8–Pay Certificate and Ex.P18–Service Register and from the same, this Court finds that the basic salary is Rs.7530/–; Dearness Allowance is Rs.6581/– and special pay is Rs.1883/– and since others are allowances viz., House Rent Allowance, Washing Allowance and Medical Allowance, this Court takes Rs.15,994/–as salary for computation of compensation and accordingly, monthly salary of the deceased at the time of the accident, is fixed at Rs.15,990/– (rounded off).

10. Further, at the time of accident, the deceased was working as an Office Assistant in Kallakurichi–1 Co-operative Sugar Mill and hence, as per the decision of our Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranay Sethi***, reported in 2017 (16) SCC 680, he is entitled for future prospectus at 15% i.e. Rs.15990/– x 15%. = Rs.2399/–. Accordingly, the pecuniary loss sustained by the claim petitioners are re-assessed as follows:–

$$(15990+2399) \times 12 \times 9 \times \frac{3}{4} = \text{Rs.14,89,509/–}$$

11. Further, the award under the heads, loss of consortium and loss of love and affection, is less and need to be enhanced. Accordingly, a sum of Rs.40,000/– is awarded to the 1st appellant/wife of the



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deceased, towards loss of consortium. Similarly, a sum of Rs.10,000/- each awarded to the appellants 2 to 4/son and daughters of the deceased, is enhanced to Rs.40,000/- each.

12. The award of Rs.25,000/- under the head funeral expenses, is on the higher side and a sum of Rs.15,000/- is awarded under the said head. No amount is awarded towards loss of estate, therefore, a sum of Rs.15,000/- is awarded. Thus, the compensation now modified is as follows:

	<i>Amount awarded by the tribunal Rs.</i>	<i>Award now modified Rs.</i>	<i>Enhanced/ Reduced</i>
Loss of dependency	8,14,968	14,89,509	Enhanced
Loss of Consortium	20,000	40,000	Enhanced
Loss of Love and Affection	30,000	1,20,000	Enhanced
Loss of estate	-	15,000	Now Awarded
Funeral Expenses	25,000	15,000	Reduced
Total	8,89,968	16,79,509	
Enhanced now			Rs.7,89,541/-
Less towards 15% contributory negligence		<u>Rs.14,27,583/-</u>	

13. In total, the claim Petitioner is entitled to a sum of Rs.14,27,583/- (Rupees Fourteen lakhs twenty seven thousand five hundred and eighty three only) with interest at the rate of 7.5% per annum from the date of Petition till date of realisation.



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14. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount **from Rs.8,89,968/- to Rs.14,27,583/-** to the extent indicated above. Out of the compensation amount, 1st appellant/wife of the deceased is entitled to Rs.5,27,583/- and the appellants 2 to 4/son and daughters of the deceased are entitled to Rs.3,00,000/- each. (Rs.3,00,000/-*3=Rs.9,00,000/-)

(ii) the 2nd Respondent/Insurance Company is directed to deposit the award amount of Rs.14,27,583/-, with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, claim Petitioners are permitted to withdraw the entire amount, as apportioned now, with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.



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(iii) The appellant/claim Petitioner is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) No costs.

24.02.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes/ No

To

- 1.The Motor Accidents Claims Tribunal
(Subordinate Judge), Chidambaram.
2. The Section Officer,
V.R.Section, High Court of Madras,Chennai.



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RMT.TEEKAA RAMAN, J.,

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