



WEB COPY



C.M.A.No.823 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.12.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.823 of 2021

1. Jothilakshmi
2. Nirmala
3. Dinesh
4. Sellammal

... Appellants

Vs.

1. Palanisamy
2. The Chairman
Bhavani Polytechnic College,
Office at Mettur Main Road,
Varadhanallur Post, Bhavani Taluk – 628 311.
3. The Divisional Manager,
Divisional Office,
United India Insurance Company Limited,
Office Situated at Mettur Main Road,
Muthaiyah Complex,
Erode – 638 001.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking enhancement of compensation in the Judgment and Decree dated 09.10.2017 made in M.C.O.P.No.435 of 2016 on the file of



C.M.A.No.823 of 2021

MACT/IV Additional District Court Erode District at Bhavani.

WEB COPY

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Ex parte [R1 & R2]
Mrs.I.Malar [R3]

JUDGEMENT

Aggrieved by the compensation granted by the Motor Accident Claims Tribunal, IV Additional District Court Erode District at Bhavani in M.C.O.P.No.435 of 2016 dated 09.10.2017, the claimants are before this Court.

2. Brief facts which are necessary for disposal of this appeal are as follows:-

(i) The appellants are the wife, daughter, son and mother of the deceased Raviraj. On 21.07.2016 at about 9.00 a.m., when the deceased was walking in the main road near Kalyani Hospital Bhavani, at that time an Eicher bearing Regn.No.TN 36 S 8005 which was driven by the first respondent in a rash and negligent manner with high speed and hit against the deceased, due to which the deceased sustained grievous injuries. Though he was rushed to the



C.M.A.No.823 of 2021

Hospital and was given treatment, he died on 22.07.2016. Claiming compensation in a sum of Rs.15,00,000/-, the appellants have filed a claim petition.

4. Before the Tribunal, the appellants examined two witnesses viz., P.W.1 and P.W.2 and marked 11 documents viz., Ex.P.1 to Ex.P.11. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal awarded a sum of Rs.7,26,211/- as compensation to the claimants. Not satisfied with the same, the present appeal has been filed by the claimants seeking enhancement.

5. The learned counsel appearing for the appellants submitted that though the age of the deceased in the ration card was mentioned as 39 years in the year 2006, since the petitioner has not marked any documents to prove the age of the deceased, the Tribunal has rightly considered the Postmortem report which is marked as Ex.P.8, wherein his age was approximately noted as 56 years and has fixed his age at 56 years at the time of accident, however, the



C.M.A.No.823 of 2021

monthly income fixed by the Tribunal is on the lower side and the Tribunal has not added future prospects, which requires to be reconsidered by this Court. That apart, the amount awarded under the head of loss of love and affection was also on the lower side and was not in consonance with the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay sethi and others reported in 2017 (16) Supreme Court Cases 680***. Further, the Tribunal has not awarded any amount under the head of loss of estate and the same is liable to be awarded. Accordingly, he prays for appropriate enhancement in favour of the appellants.

6. Per contra, the learned counsel appearing for the third respondent/Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

7. Heard the learned counsel for the appellants and the learned counsel



C.M.A.No.823 of 2021

appearing on behalf of the third respondent and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellants/claimants is with regard to the quantum of compensation awarded. It is claimed by the appellants that though the deceased had earned monthly income not less than Rs.20,000/- per month, however, without considering the same, the Tribunal has fixed the notional income at Rs.6,000/-. It has been the view of the courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in *2014 (1) TANMAC 459*, fixing a notional income of Rs.12,000/- and adding future prospects at 10%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in *2017 (16) Supreme Court Cases 680*,



C.M.A.No.823 of 2021

the total income per month is quantified at Rs.13,200/-. Deducting 1/3rd towards the personal expenses of the deceased, the loss of dependency to the family is arrived at Rs.8,800/- per month and the deceased being aged about 56 years, as evidenced from the records, adopting the multiplier of 9 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in *(2009) 6 SCC 121*, the loss of dependency to the family is arrived at Rs.8,800/- * 12 * 9 = Rs.9,50,400/-, which is worked out as follows :-

Loss of dependency	Amount (in Rs.)
Notional income (Per month)	12,000
Add: Future Prospects (Rs.12,000 x 10%) (Per month)	1,200
	13,200
Less: Personal expenses (1/3 rd) (Rs.13,200/- x 1/3) (Per month)	4,400
	8,800
Notional income (per annum) (Rs.9,900/- x 12)	1,05,600
Multiplier	9
Total	9,50,400

9. A sum of Rs.1,00,000/- has been granted under the head of "loss of consortium", which is excessive and the same is reduced to a sum of Rs.40,000/- each to the appellants 1 and 4 under the head loss of consortium



C.M.A.No.823 of 2021

and loss of parental consortium respectively. A sum of Rs.40,000/- has been granted in favour of the appellants under the head "loss of love and affection".

As the wife and mother of the deceased i.e., appellants 1 and 4 has been awarded under the head loss of consortium and the loss of parental consortium, the award granted by the Tribunal under the head loss of love and affection does not arise. Hence, this Court fixes a sum of Rs.40,000/- each to the second and third appellants who are the son and daughter of the deceased under the head "loss of love and affection". The Tribunal has granted a sum of Rs.25,000/- under the head "funeral expenses", which is on the higher side and the same is reduced to a sum of Rs.15,000/-. No amount has been granted under the head of "loss of estate". Therefore, a sum of Rs.15,000/- shall be awarded under this head. However, the compensation awarded under the other heads are just and reasonable and the same does not require any interference.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-



C.M.A.No.823 of 2021

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of dependency	4,32,000/-	9,50,400/- (enhanced)
Loss of consortium	1,00,000/-	40,000/- (reduced)
Loss of Parental consortium (4 th appellant)	-	40,000/-
Medical expenses	1,26,832/-	1,26,832/-
Loss of love and affection	40,000/-	80,000/- (enhanced)
Transportation	2,379/-	2,379/-
Funeral Expenses	25,000/-	15,000/- (reduced)
Loss of estate	-	15,000/-
Total	7,26,211/-	12,69,611/-

11. The appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.7,26,211/-** to **Rs.12,69,611/-**. The third respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.435 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any



C.M.A.No.823 of 2021

already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. The said award amount shall be apportioned amongst the appellants/claimants as per the Award of the Tribunal. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellants as per the apportionment made by the Tribunal through RTGS within a period of two (2) weeks thereafter. Any amount, in excess of the award ordered by this Court, which has been deposited by the insurance company, the insurance company is permitted to seek withdrawal of the same by filing necessary application before the Tribunal. There shall be no order as to costs in the present appeal.

20.12.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No
rap



WEB COPY



C.M.A.No.823 of 2021

M.DHANDAPANI,J.,

rap

To

1. Motor Accident Claims Tribunal,
IV Additional District Court Erode District,
Bhavani
2. The Section Officer,
V.R. Section,
High Court, Madras.

C.M.A.No.823 of 2021

20.12.2023