IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.11.2023**

CORAM:

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

C.M.A.No.2869 of 2014

Kesavan (died)
1.Magasha
2.Saraswathi
3.Sridhar
4.Jothi ... Appellants

Vs.

1.B.Irfan

2.The Divisional Manager,
The New India Assurance Company Ltd.,
No.1, Officers Line,
CSI Building, Vellore.

(No relief sought against the first respondent
hence, notice may be dispensed with) ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 10.01.2014 made in M.C.O.P.No.75 of 2010 on the file of the Motor Accident Claims Tribunal, (I Additional District and Sessions Court), Vellore.

For Appellants : Mr.M.Sivakumar

For Respondents : Notice dispensed with [R1]
Mr.M.Krishnamoorthy [R2]

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JUDGEMENT

The appellants/claimants have come forward with this appeal, challenging the decree and judgment passed in M.C.O.P.No.75 of 2010 dated 10.01.2014 on the file of Motor Accident Claims Tribunal, (I Additional District and Sessions Court), Vellore.

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

(i) The appellants are the sons and daughter of the deceased Lakshmi. On 12.05.2010 at about 8.00 a.m., when the deceased Lakshmi was travelling as Pillion rider in the TVS Super XL bearing Registration No.TN 23 J 0077. At that time, on NH road near Valladaraman Koot Road, towards east, a car bearing Registration No.TN 43 A 2324 owned by the first respondent insured with the second respondent/Insurance Company came in the same direction, driven by its driver in a rash and negligent manner and dashed against the TVS Super XL, due to which, the deceased Lakshmi sustained grievous injuries on her head and all over the body. Immediately, she was admitted in CMC Hospital, Vellore and subsequently, she died. Thereafter, the claimants, viz., the husband of the deceased along with the appellants have filed a claim petition under Section 166 Motor Vehicles Act, 1988, claiming compensation of Rs.30,00,000/- before the Motor Accidents Claims Tribunal, Vellore in M.C.O.P. No.75 of 2010.

3. Before the Tribunal, the appellants examined two witnesses viz., P.W.1 and P.W.2 and marked 9 documents viz., Ex.P.1 to Ex.P.9. On the side of the second respondent/Insurance company, one witness was examined as R.W.1 and two documents were marked as Ex.X.1 and Ex.X.2. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.5000/- each in total Rs.20,000/- as compensation to the claimants. Aggrieved by the said award dated 10.01.2014, the appellants/claimants have filed this appeal before this Court for enhancement of the compensation.

4. The learned counsel appearing for the appellants/claimants submitted that the Tribunal totally lost sight of the fact that the husband was surviving at the time of the death of the deceased and, therefore, he was entitled to loss of income and

also compensation under other heads. However, erroneously, the Tribunal held that as the claimants are married sons and daughters, they are not entitled to any loss of income. The aforesaid factum of the issue is not disputed by the learned counsel appearing for the respondent insurance company, and therefore, it is for this Court to find out the heads under which compensation could be awarded based on the materials available on record.

5. It is the further submission of the learned counsel that, at the time of accident, the deceased was running a tiffin shop and the first claimant, husband, was dependant on the deceased. However, erroneously, the Tribunal held that there are no dependants for the deceased and, hence, had not awarded any compensation under the said head. Further, the Tribunal has not granted any amount towards funeral expenses and loss of love and affection. He also submitted that, even though the husband of the deceased died during the pendency of the claim petition, he is entitled to receive compensation under the head of loss of consortium, since he was alive at the time of accident.

6. The learned counsel appearing for the second respondent/Insurance Company submitted that, during the pendency of the claim petition, the husband of the deceased died, thereby, he is not entitled for any compensation. He also submitted that the other appellants are the sons and daughter of the deceased and they have also got married. Therefore, the children of the deceased could not be considered as dependents and they are not entitled to compensation.

7. Heard the learned counsel appearing for the appellants/claimants as well as the second respondent/Insurance Company and also perused the materials available on record.

8. A perusal of the award passed by the Tribunal reveals that the Tribunal has only awarded a sum of Rs.20,000/- to the appellants. However, even under which head the said compensation has been awarded has not been spelt out by the Tribunal.

9. As rightly contended by the learned counsel for the appellants, the husband of the deceased, who was the first claimant, was alive on the date of death of the deceased and, therefore, he would fall within the four corners of being a

dependant and, therefore, would be entitled to compensation under the head loss of income.

10. To compute the income under the head loss of income, no document in support of proof of the income of the deceased has been filed. However, it is the case of the claimants that the deceased was running a tiffin centre and was earning more than Rs.10,000/- per month. 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.6,500/- 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,*** the total income per month is quantified at Rs.7,150/-. Deducting 50% towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.3,575/- per month and the deceased being aged above 50 years, as evidenced from the accident register, adopting the multiplier of 11 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 income to the family is arrived at Rs.3575 * 12 * 11 = Rs.4,71,900/-

11. Further taking into account the fact that no compensation has been awarded under the other heads, viz., funeral expenses, loss of love and affection, etc., this Court is inclined to award compensation under the head of loss of love and affection at Rs.20,000/- to each of the appellant. Further, a sum of Rs.10,000/- is awarded under the head of funeral expenses. Therefore, the compensation awarded by the Tribunal is modified as under:-

Heads	**Awarded by the Tribunal (Amount in Rs.)**	**Awarded by this Court (Amount in Rs.)**
Loss of Income	**0**	**4,71,900/- (enhanced)**
Loss of love and affection	**20,000/-**	**80,000/- (enhanced)**
Funeral Expenses	**0**	**10,000/-**
Total	**20,000/-**	**5,61,900/-**

12. The appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from Rs.20,000/- to

Rs.5,61,900/-. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.75 of 2010 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 already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. The amount of compensation awarded under the head loss of income and funeral expenses are equally apportioned between all the four claimants. On such deposit being made, the appellants/claimants are permitted to withdraw the award amount as apportioned above, along with proportionate interest and costs, less, the amount, if any, already withdrawn. The appellants/claimants are directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the appellants/claimants. There shall be no order as to costs in the present appeal.

06.11.2023

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

1.The Motor Accident Claims Tribunal, (I Additional District and Sessions Court), Vellore.

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

M.DHANDAPANI,J.,

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