



CMA.No.306 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 11.10.2023

CORAM: JUSTICE N.SESHASAYEE

CMA.No.306 of 2022
& CMP.No.2107 of 2022

ICICI Lombard General
Insurance Company Ltd.,
3rd Floor, VBC Towers,
CMH Road, Indira Nagar,
Bangalore – 560 037.

... Appellant

-Vs-

1.Kavitha
2.Sathyanarayanan
3.Uma
4.Minor Gagan
(Minor 4th Respondent, rep. by his
N.F./Mother 1st Respondent herein)
5.Mune Gowda

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, against the Judgment and Decree dated 29-01-2021 in MCOP No.40 of 2018 on the file of the Motor Accident Claims Tribunal (Special District Judge) at Krishnagiri.

For Petitioner	: M/s.R.Sree Vidhya
For R1 to R4	: Mr.B.S.Mitraneshaa for Mrs.V.Srimathi
For R5	: notice D/W Vide order dt.11.10.2023



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JUDGMENT

The appellant herein is a Insurance Company which challenges the quantum of amount in a fatal accident in which a 35 year old temple priest was killed.

2.The accident had taken place on 31.07.2015 when a TATA Ace bearing Registration no. KA-53-8541 insured with the Appellant dashed against a two wheeler, in which the deceased was traveling. The accident has not been disputed. The widow, the minor child, the father and the married sister of the victim have preferred MCOP.No.40 of 2018 before the Motor Accident Claims Tribunal, Krishnagiri. While the claimants asserted that the victim earned around Rs.15,000/- a month, the Tribunal had fixed it at Rs.9,000/-, to which it added 40% towards future prospects and deducted $\frac{1}{4}$ th towards the personal expenditure of the victim and arrived at a total loss of dependency at Rs.18,14,400/-. In addition, it also granted the third claimant, the sister of the victim a sum of Rs.20,000/- towards loss of love and affection. This is now under challenge.



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3.The learned counsel for the appellant made two pointed submissions;

- a) that the Tribunal had to have deducted 1/3rd towards the personal expenditure of the victim, whereas, it has deducted only 1/4th;
- b) that the Tribunal had not to have passed an Award granting any compensation for loss of love and affection to the married sister of the victim.

4.R5 remained ex-parte before the Tribunal. Hence, notice to R5 is dispensed with.

5.The learned counsel for the claimants/respondents 1 to 4 submits that the Tribunal had fixed the notional income of the victim lowly and it should have fixed it at at least anywhere between Rs.12,000/- to Rs.15,000/-. It may be because the victim is in the unorganized sector, that does not imply that his earning capacity must be undervalued. The learned counsel further submitted that even though no cross-objection is filed, this Court may fix such reasonable higher notional monthly income for the deceased.



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6.This Court find merit in the submissions of the learned counsel for the respondents/claimants. Even if the victim is in the unorganized sector yet, there should be some materials before this Court to enhance the monthly income to a level which he seeks. But, still the Court also agrees Rs.9,000/- as fixed by the Tribunal may not be adequate and surely the victim would be earning more than what is stated. This difference that may arise can be adequately compensated if the 1/4th deduction now provided by the Tribunal is confirmed.

7.Turning to the compensation for loss of love and affection given to the sister is concerned, this Court holds that even a married sister is entitled to the care of her brother.

8.In the light of what is herein above stated, this Court is not inclined to entertain this Civil Miscellaneous Appeal and accordingly, it is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

11.10.2023

Tsg



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To

- 1.The Motor Accident Claims Tribunal,
Special District Judge, Krishnagiri.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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N.SESHASAYEE, J.,

Tsg

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