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C.M.A.No.1921 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2023

CORAM:

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

C.M.A.No.1921 of 2020

1.Vijayakumari
2.Thangammal

Saminathan (Died)

... Appellants/Petitioners

Vs.

1.M.Perumal

2.M/s.HDFC General Insurance Co. Ltd.,
16/1 1st Floor,
Gokulam Enclave,
Kumarasamy Street,
Erode – 638 009.

... Respondents/Respondents

[The 1st respondent remained exparte before the Tribunal,
hence notice may be dispensed with the 1st respondent]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying for enhancement of the compensation amount awarded in the Judgment and Decree dated 17.08.2020 made in M.C.O.P.No.526 of 2018 on the file of the Special District Judge/Motor Accident Claims Tribunal, Erode.

For Appellants : Mr.C.Ramaraj

For Respondents : *Ex-parte* [R1]
Mr.N.Somasundaar [R2]



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JUDGEMENT

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The claimants have filed the above appeal seeking an enhancement of the award granted by the Special District Judge/Motor Accident Claims Tribunal, Erode in M.C.O.P.No.526 of 2018.

2. The claimants are the wife, mother and father (died) of the deceased Arulanantham. On 10.12.2017 at about 06.30 p.m., while the deceased was travelling on a motorcycle bearing Reg.No.TN 34 V 3159 from Mangalam to Kalipatti road, near Moolavayal bus stop from west to east, the motorcycle bearing Reg.No.TN 34 Z 3674, belonging to the first respondent and insured with the second respondent/insurance company, driven by its driver in a rash and negligent manner, dashed against the deceased vehicle from opposite side, due to which, the deceased sustained head injury, which resulted the deceased lose his breath. Thereafter, the claimants have filed a claim petition claiming compensation of Rs.50,00,000/- in M.C.O.P.No.526 of 2018. After adjudication, the Tribunal awarded a sum of Rs.21,46,851/- as compensation to the claimants. Not satisfied with the same, the present appeal has been filed by the claimants seeking enhancement.



3. The learned counsel appearing for the appellants submitted that, at the time of accident, the deceased was employed as Gang Muzdoor in Highways Department and earned a sum of Rs.27,960/- per month. However, the Tribunal instead of adopting the multiplier method, had adopted split multiplier method and awarded compensation towards loss of income, which is wholly unsustainable and the same requires to be reconsidered by this Court. Accordingly, he prays for appropriate enhancement in favour of the appellants.

4. Per contra, the learned counsel appearing for the second respondent/insurance company submitted that, by taking into consideration the retirement of the deceased, the Tribunal had rightly adopted the split multiplier method and awarded compensation towards loss of income, which is reasonable and so also the compensation awarded under the other heads, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

5. 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.



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6. 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. In this regard, it is claimed by the appellants that, at the time of death, the deceased was aged about 54 and had earned a sum of Rs.27,960/- per month by working as Gang Mazdur in the Highways Department and in order to prove the same, the appellants have marked the details of the income of the deceased as Ex.P.15. However, without considering the same, the Tribunal had awarded compensation towards loss of income by adopting split multiplier method. This Court is of the view that, merely because the deceased was going to retire within few years from the date of accident, that does not mean he would not earn more than the actual income after retirement. On the said wrong analogy, the Tribunal awarded compensation towards loss of income, which is wholly unsustainable, which is liable to be interfered with. Hence, this Court by fixing a notional income of Rs.27,960/- and adding future prospects at 15%, 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.32,154/-. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.21,436/- per month and the deceased being aged about 54 years, as evidenced from the records, 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.21,436/- * 12 * 11 = Rs.28,29,552/-, which is worked out as follows :-

Loss of Income	Amount (in Rs.)
Notional income (Per month)	27,960
Add: Future Prospects (Rs.27,960 x 15%) (Per month)	4,194
	32,154
Less: Personal expenses (1/3 rd) (Rs.32,154/- x 1/3) (Per month)	10,718
	21,436
Notional income (per annum) (Rs.21,436/- x 12)	2,57,232
Multiplier	11
Total	28,29,552

7. Further, this Court finds that the compensation awarded under the other heads are just and reasonable and does not require any interference.

8. In the above circumstances, the compensation awarded by the Tribunal is



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modified as under :-

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S.No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Loss of Income	20,26,851/-	28,29,552/- (enhanced)
2	Funeral Expenses	15,000/-	15,000/-
3	Loss of Estate	15,000/-	15,000/-
4	Loss of Consortium	40,000/-	40,000/-
5	Loss of Filial Consortium	40,000/-	40,000/-
6	Transportation	10,000/-	10,000/-
	Total	21,46,851/-	29,49,552/-

9. Accordingly, the appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.21,46,851/-** to **Rs.29,49,552/-**. The second respondent-insurance company is directed to deposit the said amount to the credit of M.C.O.P.No.526 of 2018 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. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants through



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RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation. The appellants/claimants are directed to pay necessary additional Court fee on the enhanced compensation amount. There shall be no order as to costs in the present appeal.

13.12.2023

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

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To

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



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M.DHANDAPANI,J.,

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