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C.M.A.No.3880 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM:

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

C.M.A.No.3880 of 2019

1.Shakeela
2.Salma
3.Siraj Basha

... Appellants/Petitioners

Vs.

1.A.Pannerselvam

2.M/s.Royal Sundaram Alliance Insurance Company Ltd.,
Subramani Building,
No.01, Club House Road,
Anna Salai,
Chennai – 600 002.

(No relief sought against the 1st respondent.
Hence notice may be dispense with.)

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 15.10.2015 made in M.C.O.P.No.41 of 2013 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Chengalpattu, Kancheepuram District.



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For Appellants : Mr.M.Sivakumar

For Respondents : Notice Dispensed with [R1]
Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates [R2]

JUDGEMENT

Aggrieved by the compensation granted by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Chengalpattu, Kancheepuram District in M.C.O.P.No.41 of 2013 dated 15.10.2015, the claimants are before this Court.

2. Notice to the first respondent is dispensed with in view of the endorsement made by the learned counsel appearing for the appellants today.

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

(i) The appellants are the wife, daughter and son of the deceased Rafi. On 28.01.2013, at about 2.30 p.m., when the deceased Rafi was parking his bicycle before the Attur Village Old Paper Shop, in which he was working, on



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the Chegalpattu – Kancheepuram Main Road, a Scorpio car bearing Reg.No.TN 19 H 3445, 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, as a result of which, the deceased was thrown away and sustained grievous injuries all over his body and head. Though he was rushed to the Chengalpattu Medical College Hospital and and taken treatment, however, he died on the same day night. Thereafter, the appellants have filed a claim petition claiming compensation of Rs.10,00,000/-.

4. Before the Tribunal, the appellants examined two witnesses viz., P.W.1 to P.W.2 and marked 6 documents viz., Ex.P.1 to Ex.P.6. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal awarded a sum of Rs.7,59,000/- 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 the



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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 second 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 appearing on behalf of the second respondent and perused the materials



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available on record.

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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 a sum of Rs.400/- per day, 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.10,000/- and adding future prospects at 25%, 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.12,500/-. Deducting 1/3rd towards the personal expenses of the



deceased, the loss of income to the family is arrived at Rs.8,333/- per month and the deceased being aged about 47 years, as evidenced from the records, adopting the multiplier of 13 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.8,333/- * 12 * 13 = Rs.12,99,948/-, which is worked out as follows :-

Loss of Income	Amount (in Rs.)
Notional income (Per month)	10,000
Add: Future Prospects (Rs.10,000 x 25%) (Per month)	2,500
	12,500
Less: Personal expenses (1/3 rd) (Rs.12,500/- x 1/3) (Per month)	4,167
	8,333
Notional income (per annum) (Rs.8,333/- x 12)	99,996
Multiplier	13
Total	12,99,948

9. A sum of Rs.50,000/- each has been granted to the first appellant under the head of "loss of consortium", which is excessive and the same is reduced to a sum of Rs.40,000/-. The Tribunal has granted a sum of Rs.20,000/- under the head of "funeral expenses", which is also excessive and the same is also reduced to a sum of Rs.15,000/-. Further, a sum of



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Rs.50,000/- has been awarded to the appellants 2 and 3 under the head of "loss of love and affection", which is meagre and the same is enhanced to a sum of Rs.40,000/- each. 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.

10. In the above circumstances, 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	6,24,000/-	12,99,948/- (enhanced)
Loss of love and affection (Rs.40,000/- x 2)	50,000/-	80,000/- (enhanced)
Loss of consortium	50,000/-	40,000/- (reduced)
Transportation and ambulance expenses	15,000/-	15,000/-
Funeral Expenses	20,000/-	15,000/- (reduced)
Loss of estate	-	15,000/-
Total	7,59,000/-	14,64,948/-

11. The appeal is allowed and the impugned Award of the Tribunal is



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modified by enhancing the compensation amount from **Rs.7,59,000/-** to **Rs.14,64,948/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.41 of 2013 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 said award amount shall be apportioned amongst the appellants/claimants as per the Award of the Tribunal. On such deposit being made, the appellants/claimants are permitted to withdraw the award amount falling to their share, along with proportionate accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. 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 has been produced by the claimants. There shall be no order as to costs in the present appeal.



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

To

- 1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Chengalpattu,
Kancheepuram District.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI,J.,

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