



C.M.A.No.1010 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM:

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

C.M.A.No.1010 of 2017

1.N.Dayalan

2.D.Vijayakumari

... Appellants/Petitioners

Vs.

1.V.Shanmugam

2.The United India Insurance Co. Limited,
No.64, Catholic Centre, Armenian Street,
Chennai.

Now holding office at,

Motor Third Party Claims Cell (HUB),
Silingi Buildings,
No.134, Greames Road,
Chennai – 6.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking to enhance to compensation amount awarded in judgement and decree dated 24.04.2015 in M.C.O.P.No.4460 of 2009 on the



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file of the Motor Accident Claims Tribunal/Chief Small Causes Court,
Chennai.

For Appellants : Mr.K.Prem Kumar

For Respondents : Not Ready in Notice [R1]

Mr.S.Arun Kumar [R2]

JUDGEMENT

Assailing the judgment and decree passed by the Tribunal in and by which the Tribunal had awarded lower compensation, the present appeal has been filed by the claimants/appellants seeking enhancement of compensation.

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

(i) The appellants are parents/dependents of the deceased D.Gopi. On 02.11.2009, at about 3.20 p.m., while the deceased was proceeding in his motor cycle bearing Reg.No.TN 21 AB 9082 from Arakonam towards



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Kancheepuram near Vishakandikuppam (Jai Mathajee College), the car bearing Reg.No.TN 20 C 6377 was driven by its driver in a rash and negligent manner from the opposite direction, hit the motor cycle, due to that, the deceased sustained grievous injuries and immediately, after the accident, the deceased was admitted at Kancheepuram Government Hospital, he was referred to Government Hospital, Chennai and he died on the way to the hospital. Thereafter, the appellants/claimants have filed a claim petition claiming compensation of Rs.20,00,000/- under various heads.

3. Before the Tribunal, the appellants examined three witnesses viz., P.W.1 to P.W.3 and marked 8 documents viz., Ex.P.1 to Ex.P.8. No witnesses were examined nor any documents were marked on the side of the respondents. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.7,42,000/- as compensation under various heads. Not satisfied with the same, the present appeal has been filed by the claimants seeking enhancement.



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4. Learned counsel appearing for the appellants submitted that, at the time of accident, the deceased was working as medical representative in East West Pharma Company, Salem and earning a sum of Rs.15,000/- per month. However, without considering the same, the Tribunal has fixed the notional income at Rs.6,000/-, which is on the lower side and the same requires to be reconsidered by this Court. Further, the Tribunal has not added future prospects as per the decision rendered by 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.*, which also requires to be reconsidered by this Court. Accordingly, he prays for appropriate enhancement in favour of the appellants.

5. Per contra, learned counsel appearing for the second respondent/Insurance Company submitted that, taking into consideration all the relevant documents has rightly fixed the compensation, which does not require any interference. Accordingly, he prays for dismissal of the appeal.



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6. Heard the learned counsel appearing for the appellants/claimants and the learned counsel appearing on behalf of the second respondent/Insurance Company and also perused the materials available on record.

7. 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, the appellants have examined the Assistant Manager of East West Pharma as P.W.3, who deposed that the deceased was a temporary employee and earned a sum of Rs.5,000/- per month and the allowances as Rs.7,000/- and he also deposed that the allowances can vary from month to month. To prove the income of the deceased, the appellants have marked the salary certificate as Ex.P.8. It has been the view of the courts that even a housewife is entitled to monthly



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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.7,500/- and adding future prospects at 40%, 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.10,500/-. Deducting 50% towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.5,250/- per month and the deceased being aged about 27 years, as evidenced from the records, adopting the multiplier of 17 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.5,250/- * 12 * 17 = Rs.10,71,000/-, which is worked out as follows :-



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Loss of Income	Amount (in Rs.)
Notional income (Per month)	7,500
Add: Future Prospects (Rs.7,500 x 40%) (Per month)	3,000
	10,500
Less: Personal expenses (50%) (Rs.10,500/- x 50%) (Per month)	5,250
	5,250
Notional income (per annum) (Rs.5,250/- x 12)	63,000
Multiplier	17
Total	10,71,000

8. This Court finds that the compensation awarded under the head of transport expenses is just and reasonable and does not require any interference. A sum of Rs.50,000/- each has been granted to the appellants under the head of "loss of love and affection", which is excessive and the same is reduced to a sum of Rs.40,000/- each. Further, the amount of compensation awarded under the head of funeral expenses is excessive, which has been reduced to a sum of Rs.15,000/-. Since no amount has been granted towards "loss of estate", this Court awards a sum of Rs.10,000/- under this head.



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9. 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	6,12,000/-	10,71,000/- (enhanced)
Loss of love and affection (Rs.40,000/- x 2)	1,00,000/-	80,000/- (reduced)
Funeral Expenses	25,000/-	15,000/- (reduced)
Transport expenses	5,000/-	5,000/-
Loss of Estate	-	10,000/-
Total	7,42,000/-	11,81,000/-

10. The appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.7,42,000/-** to **Rs.11,81,000/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.4460 of 2009 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit (excluding the period from 03.07.2012 to 08.04.2014) and costs as awarded by the Tribunal, less, the



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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 appellants/claimants are permitted to withdraw the award amount, along with 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 appellants/claimants. There shall be no order as to costs in the present appeal.

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

- 1.The Motor Accident Claims Tribunal/Chief Small Causes Court, Chennai.
- 2.The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI,J.,

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