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C.M.A.No.1343 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1343 of 2017

1.N.Parthasarathy
2.P.Gokul (minor)
3. P.Pavithra(minor)
4.P.Keerthika (minor)
(name amended as per order in MP.No.1336/2012, dt 08.11.2012)
2 to 4 minors rep by their father /1st appellant)
5.N.Annammal ... Appellants

..Vs..

1.G.Neelamegam
2.Future Generali India Insurance Co., Ltd.,
Karumuthu Nilayam, 1st floor North Wing,
O.No.758, N.No.192, Anna Salai,
Chennai 600 002. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2014 made in MACTOP.No.1239 of 2010 on the file of the Motor Accident Claims Tribunal (IV Judge, Small Causes Court, Chennai).

For Appellants	: Mr.M.Mahendran for M/s.N.M.Muthurajan
For Respondents	: Set exparte - R1 Mr.E.Rajadurai for R2 for Mr.M.B.Gopalan Associates



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JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 31.01.2014 passed by the IV Judge, Small Causes Court, Chennai / Motor Accident Claims Tribunal, in MACTOP.No.1239 of 2010.

2. The appellants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.

3. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of Dependency (Rs.4000 x 2/3 x12 x18)	5,75,856/-
Funeral expenses	10,000/-
Love & Affection to 4 th appellant	75,000/-
Love & Affection to the appellants 1,2,3 & 5	40,000/-
Total	7,00,856/-



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4. The learned counsel appearing for the appellants submitted that the deceased was a Coolie at the time of accident and was earning a sum of Rs.400/- per day, however, the Tribunal has erred in fixing the monthly income of the deceased as Rs.4000/- as there is no income proof. It has failed to note that Rs.6500/- income is taken for a coolie by the Hon'ble Supreme Court for the accident occurred in the year 2006. Further, he submitted that though the age of the deceased was 28 years at the time of accident, the Tribunal has not taken into account the future prospects and not awarded any amount towards "Loss of Estate". He also submitted that the Tribunal also failed to grant any amount under the head of loss of consortium to the first appellant/husband of the deceased. Also, the compensation awarded under the other heads are very meagre and hence, he prayed for enhancement of compensation.

5. The learned counsel appearing for the second respondent/ Insurance Company has submitted that after considering the oral and documentary evidence on record, the Tribunal has awarded a just and reasonable compensation and therefore, the award passed by the Tribunal



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does not warrant any interference by this court.

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6. This Court has considered the said submissions made by the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record. The first respondent has remained exparte before the Tribunal.

7. As seen from the impugned award, the Tribunal has failed to consider future prospects which is incorrect since the age of the deceased is only 28 years at the time of accident. As per the decision of the Constitution Bench of the Hon'ble Supreme Court of India in *National Insurance Company Limited Vs. Pranay Sethi and others* reported in **2017 (2) TN MAC 609 (SC)**, 40% should be added towards "Future prospects". Accordingly, this Court grants 40% towards loss of future prospects to the appellants/claimants.

8. It is contended by the appellants/claimants that the deceased was working as Coolie and was earning a sum of Rs.400/- per day. However,



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no proof of income was filed to prove the income of the deceased.

Therefore, considering the year of the accident and the age of the deceased, the Tribunal has erroneously fixed the monthly income of the deceased as Rs.4,000/- and hence the same needs revisit. The Tribunal has erroneously applied the multiplier '18' since the deceased was aged 28 years at the time of accident as per Ex.P3/copy of the postmortem certificate. Therefore, proper multiplier to be adopted in the instant case is '17' , as per the decision rendered in **Sarla Varma and others Vs. Delhi Transport Corporation and another** reported in (2009) 6 SCC 121. In the instant case, the deceased was died as a family woman. Therefore, the Tribunal has rightly deducted, $\frac{2}{3}^{\text{rd}}$ of the income towards personal expenses of the deceased. Thus, loss of dependency is calculated as $\text{Rs.}6500 + 40\% \times 12 \times 17 \times \frac{2}{3} = \text{Rs.}12,37,600/-$. Accordingly a sum of Rs.12,37,600/- is awarded towards " Loss of dependency ". Apart from this amount, the appellants/claimants 4 and 5 are entitled to Rs.40,000/- each towards " Loss of love and affection" and the deceased died at the age of 28 years and hence this court grants a sum of Rs.15,000/- towards "Loss of estate". Similarly the award granted under the head of Funeral expenses at



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Rs.10,000/- seems to be on lower side and hence this court grants a sum of

Rs.15,000/- under the head of funeral expenses.

9. The Tribunal has not granted any amount under the head of loss of consortium to the husband of the deceased, for which he is entitled to and hence, this court grants a sum of Rs.40,000/- towards loss of consortium. The compensation awarded by the Tribunal of Rs.10,000/- towards funeral expenses is low in the considered view of this Court. As per the settled practice, the compensation of Rs.10,000/- is enhanced to Rs.15000/- towards funeral expenses, by this Court. The Tribunal has erroneously failed to award any compensation towards loss of estate for which they are legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the appellants towards loss of estate.

10. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.7,00,856/- to Rs.13,87,600/- as detailed hereunder.



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<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
Loss of Dependency	5,75,856/- (4000x2/3x12x18)	12,37,600/- (6500 + 2600 x12x17x2/3)
Loss of Consortium	NIL	40,000/-
Loss of Love & affection to the claimants 1 to 5 (75000) +40000)	1,15,000/-	80,000/- (40000 /- each to the appellants 4 & 5)
Loss of Estate	NIL	15,000/-
Funeral Expenses	10,000/-	15,000 /-
Total	7,00,856/-	13,87,600/-

11. In the result, this appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The second respondent/Insurance Company is directed to deposit the enhanced award amount of **Rs.13,87,600/-** along with interest and costs, after deducting the amount already deposited, if any, to the credit of MACTOP.No.1239 of 2010 within a period of six weeks from the date of receipt of a copy of this Judgment, and thereafter, recover the same from the first respondent/owner of the vehicle, in accordance with law. Needless to state that the appellants shall pay necessary court fees for the enhanced



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compensation amount before receiving the copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the appellants/claimants through RTGS within a period of two weeks thereafter.

12. On such deposit being made, the first and fifth appellants are permitted to withdraw their respective shares as per the ratio apportioned by the Tribunal by filing appropriate applications. Insofar as the minor petitioners 2 to 4 are concerned, their share of award amount shall be deposited in any one of the Nationalised Banks till they attain majority and the first appellant/father of the minor appellants 2 to 4 is permitted to withdraw the interest accrued once in three months directly from the bank. No costs.

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Index: Yes/No
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1. The Motor Accident Claims Tribunal
(IV Judge, Small Causes Court, Chennai).

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



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A.A.NAKKIRAN., J.
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