



C.M.A.No.1308 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.12.2023**

CORAM:

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

C.M.A.No.1308 of 2021

1.Sadagopan

2.Sundaramoorthy

3.Surendran

4.Mohan

... Appellants

Vs.

1.Sivakumar

2.The ICICI Lombard General Insurance Co. Ltd.,

No.142, 1st Floor, ECR Road,

Pondicherry – 1.

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

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking for enhancement of the compensation in the judgment and decree dated 09.04.2019 made in M.C.O.P.No.153 of 2016 on the file of MACT/II – Additional District Court, Tiruvallur at Poonamallee.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Notice dispensed with [R1]
Mr.B.Sivakollapan [R2]



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JUDGEMENT

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Assailing the fair and decreetal order 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. The appellants are the husband and sons of the deceased S.Gangammal. On 29.09.2015 at about 11.50 hours, when the deceased was travelling as a pillion rider in a motorcycle bearing Regn.No.TN-73-H-8481, a Maruthi Swift car bearing Regn.No.TN-29-BAT-0029, belonging to the first respondent and insured with the second respondent, driven by its driver in a rash and negligent manner, dashed against the motorcycle in which the deceased was travelling as a pillion rider, due to which, the deceased fell down and sustained grievous injuries on her head and died on her way to hospital. Therefore, the claimants have filed a claim petition under Section 166 of Motor Vehicles Act, 1988, claiming compensation of Rs.15,00,000/- before the Tribunal for the death of the deceased in the said accident.



3. Before the Tribunal, the claimants examined one witness viz., P.W.1 and marked 15 documents viz., Ex.A.1 to Ex.A.15. On the side of the respondents, two witnesses viz., R.W.1 and R.W.2 were examined and marked 4 document viz., Ex.R.1 to Ex.R.4. After adjudication, the Tribunal, allowed the petition in part and awarded a sum of Rs.12,51,208/- as compensation to the claimants. Not satisfied with the same, the present appeal has been filed by the appellants/claimants seeking enhancement.

4. The learned counsel appearing for the appellants/claimants submitted that the 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 Tribunal has not awarded compensation towards transport expenses, which also requires to be reconsidered by this Court. Accordingly, he prays for appropriate enhancement in favour of the appellants.

5. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, though travelling three persons in a motorcycle is violation of Motor Vehicles Act, however, the Tribunal has



fastened the entire negligence on the driver of the first respondent's vehicle and directed the insurance company to compensate the appellants, which is wholly unsustainable. Further, he submitted that, the Tribunal has awarded the compensation under various heads, by considering all the relevant documents, which are just and reasonable and the same does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

6. 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.

7. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. Even though the learned counsel appearing for the insurance company made his submissions relating to negligence aspect, however, the present appeal is filed by the appellants seeking enhancement, hence, this Court is not inclined to interfere with the award passed by the Tribunal in respect of negligence.



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8. The only grievance of the claimants is with regard to the quantum of compensation awarded by the Tribunal. To compute the income under the head loss of income, no document in support of proof of the income of the deceased has been filed. However, it is claimed by the claimants that the deceased was earning a sum of Rs.500/- per day as a construction worker. 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.12,000/- 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.15,000/-. Deducting 1/4th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.11,250/- per month and the deceased being aged about 45 years, as evidenced from the records, adopting the multiplier of 14 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.11,250/- * 12 * 14 = Rs.18,90,000/-, which is worked out as follows :-

Loss of Income	Amount in Rs.
Notional income (Per month)	12,000
Add: Future Prospects (Rs.12,000 x 25%) (Per month)	3,000
	15,000
Less: Personal expenses (1/4 th) (Rs.15,000/- x 1/4 th) (Per month)	3,750
	11,250
Notional income (per annum) (Rs.11,250/- x 12)	1,35,000
Multiplier	14
Total	18,90,000

9. Since no amount has been granted under the head “loss of love and affection”, this Court awards a sum of Rs.1,20,000/- under the said head by awarding a sum of Rs.40,000/- each to the appellants 2 to 4. Further, this Court is of the view that the amount of compensation awarded by the Tribunal under the heads loss of consortium, loss of estate and funeral expenses are just and reasonable and the same are confirmed.



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10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

S. No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Total Income Loss	11,81,208/-	18,90,000/- (enhanced)
2	Loss of Consortium	40,000/-	40,000/-
3	Loss of love and affection	-	1,20,000/-
4	Loss of Estate	15,000/-	15,000/-
5	Funeral Expenses	15,000/-	15,000/-
	Total	12,51,208/-	20,80,000/-

11. In the result, the Civil Miscellaneous Appeal is partly allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.12,51,208/-** to **Rs.20,80,000/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.153 of 2016 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 by the second



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respondent/Insurance Company, the Tribunal is directed to transfer the award amount directly to the bank of the appellants/claimants through RTGS as per the apportionment of the Tribunal, within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants/claimants. There shall be no order as to costs in the present appeal.

21.12.2023

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

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To

- 1.The MACT/II – Additional District Court, Tiruvallur at Poonamallee.
- 2.The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI,J.,

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