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C.M.A.No.2008 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.2008 of 2021

1. Eswari
2. Gayathri

... Appellants

Vs.

1. Chinnusamy
2. The Divisional Manager, Divisional Office,
The New India Assurance Co. Ltd.,
Amman Complex, Mettur Road,
Erode – 638 011.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 20.03.2019 made in M.C.O.P.No.608 of 2017 on the file of the Motor Accident Claims Tribunal / Special District Court at Erode.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Notice dispensed with [R1]

Mr.K.Vinod for R2



C.M.A.No.2008 of 2021

JUDGEMENT

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Aggrieved by the compensation granted by the Motor Accident Claims Tribunal, / Special District Court at Erode in M.C.O.P.No.608 of 2017 dated 20.03.2019, the claimants are before this Court.

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

(i) On 26.03.2017 at about 10:00 a.m., when the deceased Nachimuthu was travelling as a pillion rider of his two wheeler, bearing Reg.No.TN 33 BH 7567 which was driven by the first appellant, at that time, a car bearing Reg.No.TDQ 8600 driven by its driver in a rash and negligent manner had dashed the two wheeler of the deceased, due to which the deceased sustained grievous injuries all over their body, immediately thereafter the deceased was taken to the hospital, thereby he was declared dead on 28.03.2017. Claiming compensation for a sum of Rs.15,00,000/- the appellants / claimants have filed a claim petition before the claims tribunal.



C.M.A.No.2008 of 2021

3. Before the Tribunal, the appellants examined two witnesses viz., P.W.1 and marked Exs.P.1 to Ex.P.12. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal awarded a sum of Rs.8,74,394/- as compensation to the claimants. Not satisfied with the same, the present appeal has been filed by the claimants seeking enhancement.

4. The learned counsel appearing for the appellants submitted that the monthly income fixed by the Tribunal is on the lower side 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***. Accordingly, he prays for appropriate enhancement in favour of the appellants.

5. Per contra, the learned counsel appearing for the second



C.M.A.No.2008 of 2021

respondent/Insurance Company submitted that. He further submits that though the deceased age is 51 years at the time of accident, however, the Tribunal has erroneously fixed the future prospects at 25% which is contrary to the case in ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680*** and the same requires interference. However, insofar as other heads are concerned by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement.

6. Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the second respondent and 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. It is claimed by the appellants that though the deceased had earned a sum of Rs.20,000/- per month, however, without considering the same, the



C.M.A.No.2008 of 2021

Tribunal has fixed the notional income at Rs.6,500/-. 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 10%, 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.13,200/-. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.8,800/- per month and the deceased being aged about 51 years at the time of accident, 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.8,800/- * 12 * 11 = Rs.11,61,600/-, which is worked out as follows :-

Loss of Income	Amount (in Rs.)
Notional income (Per month)	12,000



C.M.A.No.2008 of 2021

Loss of Income	Amount (in Rs.)
Add: Future Prospects (Rs.12,000 x 10%) (Per month)	1,200
	13,200
Less: Personal expenses (1/3 rd) (Rs.13,200/- x 1/3) (Per month)	4,400
	8,800
Notional income (per annum) (Rs.8,800/- x 12)	1,05,600
Multiplier	11
Total	11,61,600

8. A sum of Rs.20,000/- has been granted to the second appellant under the head of "loss of love and affection", which is on the lower side and the same is enhanced to a sum of Rs.40,000/-. The other heads granted by the Tribunal does not require any interference and the same is just and reasonable.

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



C.M.A.No.2008 of 2021

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of Income	7,15,000/-	11,61,600/- (enhanced)
Loss of love and affection (for the 2 nd appellant)	20,000/-	40,000/- (enhanced)
Loss of funeral expenses	15,000/-	14,000/-
Transportation	10,000/-	10,000/-
Consortium	40,000/-	40,000/-
Loss of estate	15,000/-	15,000/-
Medical expenses	59,394/-	59,394/-
Total	8,74,394/-	13,39,994/-

10. The appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.8,74,394/-** to **Rs.13,39,994/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.608 of 2017 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.



C.M.A.No.2008 of 2021

11. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellants through RTGS within a period of two (2) weeks thereafter. The said award amount shall be apportioned amongst the appellants/claimants as per the Award of the Tribunal. The appellants are directed to pay the necessary Court fee for the enhanced compensation amount, if required. There shall be no order as to costs.

21.12.2023

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

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



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C.M.A.No.2008 of 2021

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C.M.A.No.2008 of 2021

21.12.2023