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C.M.A.Nos.659 and 660 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.659 and 660 of 2017

1.M.Thamizharasi
2.Pavayee
3.N.Nallakumara Gounder ... Appellants in both the C.M.As.

Vs.

1.Sivaumar
2.Prejitha Prem

3.ICICI Lombard General Insurance Co. Ltd.
Rep. by its Manager,
Zenith House,
Keshavrao Khade Marg,
Mahalakshmi,
Mumbai – 400 034.

4.ICICI Lambard General Insurance Co. Ltd.
Rep. by its Manager,
Cowley Brown Road,
R.S.Puram,
Coimbatore – 2.

5.United India Insurance Co. Ltd.,
Rep. by its Manager,
Oriental Theatre Complex,
No.77, Arunachala Asari Street,
Salem – 636 001.

(Notice to R1, R2, R4 and R5 may be dispensed
with for the time being and separate petition filed
for the same) ... Respondents in both the C.M.As.



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Common Prayer:

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree made in M.C.O.P.Nos.536 and 544 of 2010 respectively, on the file of the Motor Accident Claims Tribunal Cum 4th Additional District Court, Bhavani, Erode District dated 11.09.2013 and for enhancement of compensation.

For Appellants : Mr.C.Kulanthaivel
For Respondents : Mrs.R.Sreevidhya for R4
R1 to R3 and R5 – NRN

COMMON JUDGMENT

These appeals have been filed by the appellants/ claimants seeking enhancement of the compensation awarded by the Motor Accidents Claims Tribunal Cum 4th Additional District Court, Bhavani, Erode District in the judgment dated 11.09.2013 made in M.C.O.P.Nos.536 and 544 of 2010 respectively.

2.The brief facts of the case is that on 29.08.2010 at about 03.10 p.m., the deceased Saravanakumar and Palaniammal were riding in TVS Heavy Duty bearing Registration No.TN-52-A-2968 in

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Salem to Kovai NH 47, Pallakkapalayam near Maruthi Halo Pricks towards West to East. At that time a Maruthi Car bearing Registration No.KL-05-Y-3531 driven by the first respondent and owned by the second respondent, came in the same direction, in a rash and negligent manner and hit behind the Motor Cycle, due to which, the said Saravanakumar and Palaniammal sustained grievous injuries and were admitted in Hospital and thereafter they died.

3. Thereafter, the dependants of the deceased/ appellants filed claim petitions before the Motor Accidents Claims Tribunal, claiming compensation of Rs.20 Lakhs and Rs.50 Lakhs respectively. After adjudication, the Tribunal, awarded a sum of Rs.5,35,000/- and Rs.6,71,874/- respectively, with interest at the rate of 7.5% from the date of petition till the date of deposit and proportionate costs and directed the third respondent Insurance Company to pay the compensation. Aggrieved by the same, the claimants have filed these appeals seeking enhancement of compensation.

4. The learned counsel appearing for the appellants/ claimants submitted that the deceased are the son and mother respectively. The



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age of the son at the time of death is 21 years and the age of the mother at the time of death is 37 years. The son was earning a sum of Rs.10,000/- per month and the mother was earning a sum of Rs.25,000/- per month, however, the Tribunal fixed the monthly income of the deceased as Rs.4,000/- per month. Further, the Tribunal instead of adopting the multiplier of 18 and 15 respectively, wrongly adopted the multiplier of 16 and awarded compensation, which is not sustainable. The Tribunal also did not award any amount for future prospects. Hence, the appellants are entitled to enhancement in compensation.

5.The learned counsel appearing for the Insurance Company submitted that the Tribunal after considering all the factual aspects awarded compensation and hence, the impugned judgment and decree warrants no interference.

6.Heard the arguments advanced by the learned counsel appearing for the appellants/ claimants as well as the learned counsel appearing for the Insurance Company and perused the materials available on record.



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7. Admittedly, on 29.08.2010 at about 03.10 p.m., the deceased Saravanakumar and Palaniammal were riding in a motor cycle in Salem to Kovai NH 47, Pallakkapalayam near Maruthi Halo Pricks towards West to East. At that time a Maruthi Car driven by the first respondent and owned by the second respondent, came in the same direction, in a rash and negligent manner and hit behind the motor cycle, due to which, the said Saravanakumar and Palaniammal sustained grievous injuries and were admitted in Hospital and thereafter they died.

8. The accident and the manner in which the accident took place are not in dispute. The liability is also not disputed. These appeals have been filed for enhancement in compensation.

9. In C.M.A.No.659 of 2017 (M.C.O.P.No.536 of 2010):

(i) The tribunal after elaborately discussing the factual aspects awarded a sum of Rs.5,12,000/- for loss of income, Rs.5,000/- for funeral expenses, Rs.3,000/- for transportation charges, Rs.15,000/- for love and affection and arrived at a total compensation of Rs.5,35,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.



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(ii)The Tribunal has awarded a sum of Rs.5,12,000/- for loss of income by fixing a sum of Rs.4,000/- as the monthly salary of the deceased and by deducting 1/3 of the monthly salary towards personal expenses and by adopting the multiplier 16. The deceased was 21 years at the time of death and hence the correct multiplier to be adopted is 18. This Court by following the decision of the Hon'ble Supreme Court reported in MANU/SC/1366/2017 [National Insurance Company Limited Vs. Pranay Sethi and others], fix the monthly salary of the deceased as Rs.5,000/- and since the deceased is a bachelor, this Court is of the opinion 1/2 of the monthly salary has to be deducted towards personal expenses. Accordingly, the actual loss of income works out to Rs.5,40,000/- [$\text{Rs.2,500/-} \times 12 \times 18 = \text{Rs.5,40,000/-}$]. This Court is of the opinion that some amount has to be awarded for future prospects. Accordingly, this Court awards 40% of actual loss of income for future prospects, which comes to Rs.2,16,000/- [40% of Rs.5,40,000/- = Rs.2,16,000/-]. The amount awarded under the heads love and affection and funeral expenses are also low and this Court is inclined to enhance the amount awarded under the said heads. Accordingly, the amount awarded for love and affection is enhanced to Rs.1,20,000/- from Rs.15,000/- and the



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amount awarded for funeral expenses is enhanced to Rs.10,000/- from Rs.5,000/-, however, the amount awarded for transportation charges, in the opinion of this Court is just and reasonable and the same is confirmed.

(iii) Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of income	Rs.5,12,000/-	Rs.5,40,000/-
2.	Funeral Expenses	Rs. 5,000/-	Rs. 10,000/-
3.	Love and affection	Rs. 15,000/-	Rs.1,20,000/-
4.	Transportation charges	Rs. 3,000/-	Rs. 3,000/-
5.	Future prospects	---	Rs.2,16,000/-
	Total	Rs.5,35,000/-	Rs.8,89,000/-

(iv) The claimants are entitled to total compensation of Rs.8,89,000/-, out of which, the first claimant/ first petitioner in the claim petition is entitled to 80% of the modified/ enhanced award, the second claimant/ second petitioner in the claim petition is entitled to 10% of the modified/ enhanced award and the third claimant/ third petitioner in the claim petition is entitled to 10% of the modified/ enhanced award. The third respondent Insurance Company shall deposit the modified/ enhanced award amount with interest at the



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rate of 7.5% p.a. from the date of petition till the date of deposit.

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10.In C.M.A.No.660 of 2017 (M.C.O.P.No.544 of 2010):

(i)The Tribunal after elaborately discussing the factual aspects awarded a sum of Rs.5,12,000/- for loss of income, Rs.5,000/- for funeral expenses, Rs.3,000/- for transportation charges, Rs.15,000/- for love and affection, Rs.1,36,874/- for medical expenses and arrived at a total compensation of Rs.6,71,874/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

(ii)The Tribunal has awarded a sum of Rs.5,12,000/- for loss of income by fixing a sum of Rs.4,000/- as the monthly salary of the deceased and by deducting 1/3 of the monthly salary towards personal expenses and by adopting the multiplier 16. The deceased was 37 years at the time of death and hence the correct multiplier to be adopted is 15. This Court by following the decision of the Hon'ble Supreme Court reported in MANU/SC/1366/2017 [National Insurance Company Limited Vs. Pranay Sethi and others], fix the monthly salary of the deceased as Rs.5,000/- and by deducting 1/3 of the monthly salary towards personal expenses, the actual loss of income works out to Rs.6,00,120/- [Rs.3,334/- X 12 X 15 = Rs.6,00,120/-]. This



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Court is of the opinion that some amount has to be awarded for future prospects. Accordingly, this Court awards 40% of actual loss of income for future prospects, which comes to Rs.2,40,048/- [40% of Rs.6,00,120/- = Rs.2,40,048/-]. The amount awarded under the heads love and affection and funeral expenses are also low and this Court is inclined to enhance the amount awarded under the said heads. Accordingly, the amount awarded for love and affection is enhanced to Rs.1,20,000/- from Rs.15,000/- and the amount awarded for funeral expenses is enhanced to Rs.10,000/- from Rs.5,000/-, however, the amount awarded for transportation charges and for medical expenses, in the opinion of this Court is just and reasonable and the same are confirmed.

(iii).Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of income	Rs.5,12,000/-	Rs.6,00,120/-
2.	Funeral Expenses	Rs. 5,000/-	Rs. 10,000/-
3.	Love and affection	Rs. 15,000/-	Rs.1,20,000/-
4.	Transportation charges	Rs. 3,000/-	Rs. 3,000/-
5.	Medical expenses	Rs.1,36,874/-	Rs.1,36,874/-
6.	Future prospects	---	Rs.2,40,048/-
	Total	Rs.6,71,874/-	Rs.11,10,042/-



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(iv)The claimants are entitled to total compensation of Rs.11,10,042/- rounded off to Rs.11,10,000/-, out of which, the first claimant/ first petitioner in the claim petition is entitled to 80% of the modified/ enhanced award, the second claimant/ second petitioner in the claim petition is entitled to 10% of the modified/ enhanced award and the third claimant/ third petitioner in the claim petition is entitled to 10% of the modified/ enhanced award. The third respondent Insurance Company shall deposit the modified/ enhanced award amount with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

11.The civil miscellaneous appeals are allowed. The judgment and decree dated 11.09.2013 made in M.C.O.P.Nos.536 and 544 of 2010 respectively, by the Motor Accidents Claims Tribunal Cum 4th Additional District Court, Bhavani, Erode District, is modified to the above extent.

12.The third respondent Insurance Company is directed to deposit the modified/ enhanced award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this



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judgment, less the amount if any, already deposited. On such deposit being made, the appellants/ claimants are permitted to withdraw their respective shares as apportioned by this Court, along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The appellants/ claimants shall not be entitled to any interest for the period of delay, if any, in filing the appeals. The appellants/ claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accidents Claims Tribunal Cum 4th Additional District Court, Bhavani, Erode District, shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellants/ claimants.

13.The civil miscellaneous appeals are allowed. No costs.

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Motor Accidents Claims Tribunal Cum
4th Additional District Court, Bhavani, Erode District.

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M.DHANDAPANI,J.
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