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C.M.A.No. 648 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.03.2023**

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI**

C.M.A.No. 648 of 2021

Reliance General Ins. Co. Ltd.
Reliance Centre, 19, Walchand Hirachand Marg,
Ballard Estate,

Mumbai – 400 001.

Coimbatore branch at No. 965, Harita Centre,
II Floor, Sony World Building, Avinashi Road,
Lakshmi Mills Post, Coimbatore.

... Appellant

Vs.

1. Mr. K. Venkatraman
2. Mr. Madhankumar
3. Ms. Divyadarshini (now major)
4. Mr. P. Senthilkumar

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 20.02.2019 made in M.C.O.P. No. 842 of 2015, on the file of the Motor Accidents Claims Tribunal, Special Sub Court, (MCOP) at Coimbatore.

For Appellant : Ms. C. Bhuvanasundari

For Respondents : Mr. K.M.D. Muhilan
for respondents 1 to 3
fourth respondent- No appearance



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JUDGMENT

***[Judgment of the Court was delivered
by D.KRISHNAKUMAR, J.]***

Challenging the award passed by the Motor Accidents Claims Tribunal, Special Sub Court, (MCOP) at Coimbatore in M.C.O.P. No.842 of 2015, the appellant insurance company has preferred this appeal.

2. The facts of the case are that on 16.03.2014, when the deceased Sumathi was travelling as a passenger in autorickshaw bearing Registration No. TV 66 B 5637 on the Coimbatore to Pollachi Main Road, from south to north, the driver of the autorickshaw/first respondent drove the vehicle in a rash and negligent manner and the said vehicle was capsized in the road. As a result of the accident, Sumathi sustained grievous injuries and subsequently, succumbed to death.

3. The claimants/respondents 1 to 3, who are the husband, son and daughter of the deceased Sumathi, have filed the claim petition, claiming a compensation of a sum of Rs. 52,00,000/- for the death of the deceased Sumathi along with interest and costs.



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4. According to the claimants, the deceased Sumathi was running a catering service and was earning a sum a Rs. 30,000/- per month at the time of the accident and she was aged about 40 years.

5. The appellant/second-respondent Insurance Company had filed a counter before the Tribunal denying all the allegations made by the claimants.

6. The oral and documentary evidence had been adduced on both sides.

7. The Tribunal, based on the evidence and relevant records, had come to a conclusion that there was negligence on the part of the fourth respondent herein, driver of the vehicle. Therefore, fixing the liability on the appellant insurance company, being the insurer of the vehicle, driven by fourth respondent, the Tribunal had awarded a sum of Rs.40,50,000/- to the respondents/claimants 1 to 3. Challenging the said compensation amount awarded by the Tribunal, the appellant insurance company has preferred the present appeal before this Court.



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8. The first contention of the appellant insurance company is that the Tribunal had erred in considering to award compensation amount for future prospects. The second contention of the appellant insurance company is that deduction of personal and living expenses at 1/3rd of compensation award amount is contrary to law. The third contention raised in the appeal is that the Tribunal has awarded a sum of Rs. 2,00,000/- under the head "Love and Affection" in favour of the 2nd and 3rd respondents, who are the son and daughter of the deceased Sumathi, is excessive as per the decision rendered in the case of **Magma General Insurance Co. Ltd., vs. Nanu Ram and others** reported in **2018(1) TN MAC 452 (SC)**. On the aforesaid grounds, the appeal has been preferred before this Court.

9. The learned counsel for the respondents/claimants has stoutly objected for the above grounds raised by the appellant/insurance company and submitted that the Tribunal had rightly come to the conclusion and awarded the compensation to the respondents 1 to 3. According to the learned counsel for the respondents, there is no necessity warranting interference with the said compensation awarded by the Tribunal, and therefore, seeks for dismissal of the appeal.



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10. Heard the learned counsel for the parties and perused the materials on record.

11. On going through the entire award passed by the Tribunal, it is found that the Tribunal, based on evidence, both oral and documentary, had come to the conclusion that there is negligence on the part of the fourth respondent herein, driver of the vehicle. Therefore, the Tribunal, fixing the liability as against the appellant insurance company, being the insurer of the vehicle, has awarded the compensation amount of Rs.40,50,000/- to the respondents 1 to 3, under the heads of Loss of dependency, love and affection, loss of consortium, funeral expenses and loss of estate.

12. The Tribunal has calculated the loss of dependency as follows:
The Tribunal has relied upon Exs. P5 to P7, income tax assessment returns, which have been marked on the side of the respondents 1 to 3, for the years 2010-11, 2011-2012 and 2012-2013, and based on the aforesaid income tax assessment returns, the Tribunal had come to the conclusion that the annual income of the deceased at the time of accident was Rs.3,00,000/- per annum, which comes to Rs. 25,000/- per month. Further as per the decision rendered in the **Sarla Verma's case**, after adding 40 %



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towards future prospects, it comes to Rs.35,000/- per month and therefore the annual income of the deceased comes to Rs.4,20,000/- (35000*12). Out of the said amount, as per **Trilok Chandra's case**, as the deceased was having three dependants, $\frac{1}{3}^{\text{rd}}$ of her annual income was deducted, which comes to Rs.2,80,000/- (Rs.4,20,000-1,40,000/-). As per **Sarla Verma's case**, since the age of the deceased was 40 at the time of accident, multiplier 15 was adopted. Hence, the loss of dependency comes to Rs. 42,00,000/- (Rs.2,80,000*15). As per the income slab of the deceased, 10 % was deducted towards income tax. After deducting the income tax from the calculated loss of dependency, the actual loss of dependency comes to Rs. 37,80,000/-.

13. As regards the other heads, the Tribunal has awarded the compensation amount towards loss of Estate, a sum of Rs. 15000/-, towards Loss of Consortium a sum of Rs. 40,000/-, towards Funeral Expenses a sum of Rs. 15,000/- and towards Love and affection a sum of Rs. 2,00,000/-, to the son and daughter of the deceased.



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14. On considering the entire documents marked on the side of the claimants/respondents 1 to 3 and the finding rendered by the Tribunal while determining compensation under the aforesaid heads, absolutely we see no ground warranting interference, except the compensation awarded under the head of love and affection since the awarded amount being just and fair.

15. The only contention of the learned counsel for the appellant is that the compensation awarded for a sum of Rs. 2,00,000/- under the head of love and affection in favour of the claimants 2 and 3 namely the son and daughter of the deceased Sumathi is excessive, which requires consideration of this Court. The contention of the is appellant is that, in the light of the decision of the Hon'ble Supreme Court, in **Magma General Insurance Co. Ltd., vs. Nanu Ram and others** reported in **2018(1) TN MAC 452 (SC)**, claimants 2 and 3 are entitled for a sum of Rs. 40,000/- each but the Tribunal has awarded a sum of Rs. 2,00,000/-. Therefore, to that extent, there is force in the submission made by the learned counsel for the appellant insurance company.



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16. In view of the above, we are in agreement with the submissions made by the learned counsel for the appellant that the amount awarded under the head love and affection is excessive and therefore we are inclined to modify the said award by granting Rs. 80,000/- (Rs.40,000/- each) under the head "love and affection".

17. In respect of other heads, the amount awarded by the Tribunal towards Compensation for loss of dependency Rs.37,80,000/-, towards loss of Consortium Rs.40,000/-, towards funeral expenses Rs.15,000/- and towards loss of estate Rs.15,000/- are confirmed by this Court.

18. Thus, the compensation under the various heads awarded by the Tribunal is modified as follows:

Sl.No	Heads	Compensation awarded by the tribunal Amount in Rs.	Compensation modified by this Court Amount in Rs.
1	Loss of Dependency	37,80,000/-	37,80,000/-
2	Love and Affection (son and daughter) Rs. 40,000/- each	2,00,000/-	80,000/-
3	Loss of Consortium	40,000/-	40,000/-



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Sl.No	Heads	Compensation awarded by the tribunal Amount in Rs.	Compensation modified by this Court Amount in Rs.
	for (husband)		
4	Funeral Expenses	15,000/-	15,000/-
5	Loss of Estate	15,000/-	15,000/-
	Total	40,50,000/-	39,30,000/-

19. In view of the above, the compensation amount awarded by the Tribunal is reduced from Rs.40,50,000/- to Rs.39,30,000/-. Thus the award passed by the Tribunal is modified and consequently, the Civil Miscellaneous Appeal is partly allowed.

20. The appellant insurance company is directed to deposit the entire compensation amount at the rate of 7.5% interest per annum, to the credit of M.C.O.P.No. 842 of 2015, from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment, less if any amount already deposited.



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21. On such amount being deposited, the respondents/claimants 1 to 3 are permitted to withdraw the amount as modified by this Court as per their proportionate share, as apportioned by the Tribunal, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

22. With the above, the Award of the Tribunal is modified. Consequently, the Civil Miscellaneous Appeal is partly allowed. No costs. C.M.P.No. 3954 of 2021 is closed.

(D.K.K., J.) (K.G.T., J.)
23.03.2023

Intex : Yes/No
Internet : Yes/No
mrn



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To

1. The Motor Accidents Claims Tribunal,
Special Sub Court, (MCOP),
Coimbatore.

2.V.R.Section,
Madras High Court,
Chennai.



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D.KRISHNAKUMAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

(mrn)

JUDGMENT MADE IN
C.M.A.No.648 of 2021

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