



WEB COPY



C.M.A.No.4055 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.12.2023**

CORAM:

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

C.M.A.No.4055 of 2019

1.N.S.Dhanalakshmi
2.T.Sivasakthi
3.Minor. Samyuktha
4.Minor. Karthiyayanee

... Appellants

Vs.

1.D.Kumar

2.The New India Assurance Company Ltd.,
Maruthi Insurance Serving,
D.O.312600,
2nd Floor, Jeevan Deep Building,
No.8, Parliament Street,
New Delhi – 110 001.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 14.07.2010 passed in M.C.O.P.No.46 of 2009 on the file of the Motor Accident Claims Tribunal, (II Additional Sub Court), Erode (M.C.O.P.No.84 of 2009 of District Court, Erode).



C.M.A.No.4055 of 2019

For Appellants : Mr.K.Govi Ganesan

For Respondents : No appearance [R1]
Mr.J.Chandran [R2]

JUDGEMENT

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

(i) The appellants are the mother, wife and daughters of the deceased Thilak. On 19.10.2008, at about 6.15 p.m., the deceased Thilak was riding his motorcycle bearing Registration No.TN 37 AY 3746 on the northern side of the east west Erode to Perundurai Road from west to east direction. At that time, the first respondent drove his car, viz., Maruthi Wagan R bearing Registration No.TN 30 P 8607 insured with the second respondent/Insurance Company, in a rash and negligent manner and came on the wrong side of the



C.M.A.No.4055 of 2019

road from east to west direction and dashed against the deceased Thilak, due to which, the deceased Thilak sustained multiple grievous injuries all over the body. Immediately, he was taken to Government Hospital, Erode and inspite of the treatment given to him, he died on the same day at about 07.30 p.m. Therefore, the appellants/claimants have filed a claim petition under Section 166 of Motor Vehicles Act, 1988, claiming compensation of Rs.15,00,000/- before the Motor Accidents Claims Tribunal, Erode in M.C.O.P.No.46 of 2009.

3. Before the Tribunal, the appellants examined three witnesses viz., P.W.1 to P.W.3 and marked 14 documents viz., Ex.A.1 to Ex.A.14. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal, allowed the petition in part and awarded a sum of Rs.6,22,000/- as compensation to the claimants. Aggrieved by the said award dated 14.07.2010, the present appeal has been filed by the appellants/claimants seeking enhancement.



C.M.A.No.4055 of 2019

4. The learned counsel appearing for the appellants 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 amounts awarded under the heads of loss of love and affection, loss of estate and funeral expenses were also on the lower side and were 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*.

5. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which 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



C.M.A.No.4055 of 2019

materials available on record.

WEB COPY

7. The factum of the accident is not disputed by the parties and so also the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the claimants is with regard to the quantum of compensation awarded. 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 the case of the claimants that the deceased was working as a car driver and was earning a sum of Rs.7,000/- per month. 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.9,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported



C.M.A.No.4055 of 2019

in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.12,600/-. Deducting 25% towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.9,450/- per month and the deceased being aged about 26 years, as evidenced from the records, adopting the multiplier of 17 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.9,450/- * 12 * 17 = Rs.19,27,800/-, which is worked out as follows :-

Loss of Income	Amount in Rs.
Notional income (Per month)	9,000
Add: Future Prospects (Rs.9,000 x 40%) (Per month)	3,600
	12,600
Less: Personal expenses (25%) (Rs.12,600/- x 25%) (Per month)	3,150
	9,450
Notional income (per annum) (Rs.9,450/- x 12)	1,13,400
Multiplier	17
Total	19,27,800

8. A sum of Rs.75,000/- has been granted under the head of "loss of



C.M.A.No.4055 of 2019

consortium", which is reduced to a sum of Rs.40,000/-. The appellants 1, 3 and 4 are entitled to a sum of Rs.40,000/- each under the head of loss of love and affection. Therefore, the amount under this head is enhanced to a sum of Rs.1,20,000/-. Further, the amount of compensation awarded under the head of funeral expenses is meagre, which has been enhanced to a sum of Rs.15,000/- and the amount of compensation awarded under the head of loss of estate is also meagre, which is also enhanced to a sum of Rs.15,000/-.

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

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of Income and dependency	4,32,000/-	19,27,800/- (enhanced)
Loss of love and affection	1,00,000/-	1,20,000/- (enhanced)
Loss of Consortium	75,000/-	40,000/- (reduced)
Funeral Expenses	10,000/-	15,000/- (enhanced)
Loss of Estate	5,000/-	15,000/- (enhanced)



WEB COPY



C.M.A.No.4055 of 2019

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Total	6,22,000/-	21,17,800/-

10. The appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.6,22,000/-** to **Rs.21,17,800/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.46 of 2009 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. From the above said award amount, the first appellant is entitled to Rs.4,17,800/-, the second appellant is entitled to Rs.7,00,000/- and the appellants 3 and 4 are entitled to Rs.5,00,000/- each. On such deposit being made by the second respondent/Insurance Company, the appellants 1 and 2 are permitted to withdraw the award amount as apportioned above, along with proportionate interest and costs, less, the amount, if any, already withdrawn.



C.M.A.No.4055 of 2019

WEB COPY

11. Insofar as the claimants, who were minors on the date of the filing of the petition, subject to their attainment of majority and production of proof thereof with regard to their majority, the minors are permitted to withdraw their share of apportionment along with proportionate interest and costs. If any of the claimants are still minors, the Tribunal is directed to keep their share in an interest yielding fixed deposit with any one of the Nationalised Banks, initially for a period of three years to be renewed at periodic intervals until they attain majority and interest derived from out of the said share of the minor shall be paid to the second appellant/mother every quarter to be utilised for the welfare of the said minor.

12. Further, the appellants/claimants are directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the appellants/claimants. There shall be no order as to costs in the present appeal.



C.M.A.No.4055 of 2019

WEB COPY

06.12.2023

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

sp

To

- 1.The Motor Accident Claims Tribunal, (II Additional Sub Court), Erode.
- 2.The Section Officer, V.R. Section, High Court, Madras.



WEB COPY



C.M.A.No.4055 of 2019

M.DHANDAPANI,J.,

sp

C.M.A.No.4055 of 2019

06.12.2023