



C.M.A.No.3995 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2023

CORAM:

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

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- 1.Minor A.Vijaya Harshan
- 2.Minor A.Vijaya Koushal

Both are represented by their
Guardian Sundaravadivel

... Appellants/Petitioners

Vs.

- 1.Desigamoorthy
- 2.A.Senthilkumar

3.Oriental Insurance Co. Ltd.,
Rep. by its Branch Manager,
Life Building,
Trichy Road,
Coimbatore.

(Respondent 1 and 2 set exparte before Tribunal.
Hence, notice not necessary to R1 and R2)

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking enhancement of the compensation amount awarded in the compensation amount awarded in the judgment and decree dated 03.09.2012 made in M.C.O.P.No.813 of 2009 on the file of the MACT V Additional District and Sessions Court, Coimbatore.



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For Appellants : Mr.K.Balasubramaniam
For Respondents : Not Ready in Notice [R1]
No appearance [R2]
Mr.N.Sampath [R3]

JUDGEMENT

Aggrieved by the compensation granted by the Motor Accident Claims Tribunal, V Additional District and Sessions Court, Coimbatore in M.C.O.P.No.813 of 2009 dated 03.09.2012, the claimants are before this Court.

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

(i) The appellants are the sons of the deceased A.Kumutha. On 12.05.2007, the deceased A.Kumutha, her husband M.Alaguvel, their daughter Minor Indhumathi, sons Minor A.Vijay Harshan and Minor Vijay Koushal, the deceased's brother-in-law Rajasekar, his wife Parameshwari and their daughter Minor Durga and Minor Nithya, were travelling to Palani Temple for a family function scheduled to be held on 13.05.2007 in a motor car Maruthi Zen bearing Reg.No.KA 20 M 4072 a Scorpio car bearing Reg.No.TN 19 H 3445, belonging to the said Rajasekar and insured with the third respondent/Insurance Company. When the car passing through Udumalai Palani Road, near Pushpathur, Pothupatti



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Pirivu from West to East direction, one Chevrolet Tavera car bearing Reg.No.TN

38 AH 5500 came in the opposite direction from East to West, driven by its driver in a rash and negligent manner violating all traffic rules, hit against the Maruthi Zen car, as a result of which, the Maruthi Zen was smashed to scrap and the deceased, Alaguvel, Indhumathi and Rajasekar were died on the spot. Thereafter, the appellants have filed a claim petition claiming compensation of Rs.20,00,000/- under various heads.

3. Before the Tribunal, the appellants examined five witnesses viz., P.W.1 to P.W.5 and marked 31 documents viz., Ex.P.1 to Ex.P.31. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal awarded a sum of Rs.7,70,000/- 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 though the Tribunal had fixed the monthly income based on the salary certificate of the deceased, however, the Tribunal has not added future prospects, 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*. Further, the Tribunal has not awarded any amount under the heads of loss of estate, transportation and funeral expenses and the same are liable to be awarded. Accordingly, he prays for appropriate enhancement in favour of the appellants.

5. Per contra, the learned counsel appearing for the third 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 for the appellants and the learned counsel appearing on behalf of the third 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 the deceased was a teacher and had earned a sum of Rs.5,625/- per month and in order to prove the same, they have marked the salary certificate as Ex.P.14. By considering Ex.P.14, the Tribunal had fixed the monthly income at Rs.5,625/-. Therefore, this Court is also inclined to fix the monthly income of the deceased at Rs.5,625/-. By fixing a notional income of Rs.5,625/- 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 in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.7,875/-. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.5,250/- per month and the deceased being aged between 35 to 40 years, as evidenced from the records, adopting the multiplier of 16 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.5,250/- * 12 * 16 = Rs.10,08,000/-, which is worked out as follows :-



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Loss of Income	Amount (in Rs.)
Notional income (Per month)	5,625
Add: Future Prospects (Rs.5,625 x 40%) (Per month)	2,250
	7,875
Less: Personal expenses ($1/3^{\text{rd}}$) (Rs.7,875/- x $1/3$) (Per month)	2,625
	5,250
Notional income (per annum) (Rs.5,250/- x 12)	63,000
Multiplier	16
Total	10,08,000

8. A sum of Rs.50,000/- each has been granted under the head of loss of love and affection, which is meagre and the same is enhanced to a sum of Rs.40,000/- each to the appellants. No amount has been granted under the heads of transportation, funeral expenses and loss of estate'. Therefore, a sum of Rs.5,000/-, Rs.15,000/- and Rs.15,000/- shall be awarded under these heads respectively.

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



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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of Income	7,20,000/-	10,08,000/- (enhanced)
Loss of love and affection (Rs.40,000/- x 2)	50,000/-	80,000/- (enhanced)
Transportation	-	5,000/-
Funeral Expenses	-	15,000/-
Loss of estate	-	15,000/-
Total	7,70,000/-	11,23,000/-

10. When the claim petition was filed in the year 2008, the appellants were aged about 6 years. Now, the appellants should be aged about 24 years and are therefore, major. Though no application has been taken out to declare them as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the appellants as major and discharges their guardian Mr.Sundaravadivel from the guardianship. The Registry shall carry out the necessary amendments.

11. The appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.7,70,000/-** to **Rs.11,23,000/-**. The third respondent-Insurance Company is directed to deposit



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the said amount to the credit of M.C.O.P.No.813 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.

The said award amount shall be apportioned amongst the appellants/claimants as per the Award of the Tribunal. On such deposit being made, the appellants/claimants are permitted to withdraw the award amount falling to their share, along with proportionate accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. 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 has been produced by the claimants.

There shall be no order as to costs in the present appeal.

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Index : Yes / No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

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- To
- 1.The Motor Accident Claims Tribunal,
V Additional District and Sessions Court,
Coimbatore.
 - 2.The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI,J.,

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