



C.M.A.No.2477 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

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

C.M.A.No.2477 of 2019

and

C.M.P.No.15520 of 2019

1. Suguna
2. Minor Suganthi
D/o.Suresh,
Eilari Village & Post,
Kattumannarkudi Taluk,
Cuddalore District.
3. Kamatchi
4. Bradhaban

... Appellants

Vs.

1. Radhika
2. United India Insurance Co.Ltd.,
100, South Car Street,
Chidambaram.
3. M/s.Kadirkamam Estates Pvt.Ltd.,
CKR Complex,
Near Palakarai,
Perambalur.
4. Royal Sundaram Alliance
Insurance Company Ltd.,
45 & 46, Whites Road,
Chennai – 600 014.

... Respondents



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Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the order and decretal order dated 27.07.2012 passed in M.C.O.P.No.401 of 2009 on the file of Motor Vehicles Accident Claims Tribunal / Principal District Court, Perambalur.

For Appellants : Mr.C.Ashok Kumar

For Respondents : No Appearance [R1 & R3]
Mr.G.Vasudevan for R4
Mr.S.Arun Kumar for R2

JUDGEMENT

Aggrieved by the compensation granted by the Motor Accident Claims Tribunal (Principal District Judge), Perambalur in M.C.O.P.No.401 of 2009 dated 27.07.2012, the claimants are before this Court.

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

(i) On 11.10.2008 at about 3.15 a.m., when the deceased Suresh was travelling as a cleaner in the lorry belonging to the first respondent insured with the second respondent bearing Regn.No.TN 21 L 0262, at that time a tipper lorry bearing Regn.No.TN 46 F 3669 belonging to the third respondent



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insured with the fourth respondent driven by its driver which came in the opposite direction in a rash and negligent manner and dashed against the first respondent lorry, due to which the said lorry was capsized on the road and as a result of which the cleaner of the first respondent lorry died on spot. Claiming compensation in a sum of Rs.8,00,000/- the claim petition has been filed by the appellants herein.

3. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked Exs.P.1 to Ex.P.3. On the side of respondents neither any witnesses were examined nor any documents were marked. After adjudication, the Tribunal awarded a sum of Rs.4,60,000/- as compensation to the claimants. Not satisfied with the compensation awarded by the Tribunal, the present appeal has been filed by the appellants seeking enhancement.

4. The learned counsel appearing for the appellants / claimants submitted that though the deceased earned a sum of Rs.4,500/- per month as a cleaner, however, the Tribunal has awarded only a sum of Rs.2,500/- per month, which is on the lower side, and the same requires to be reconsidered by



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this Court. He further submits that 40% future prospects has not been added by the Tribunal. That apart, the amount awarded under the head loss of love and affection is also on the lower side and the same is also 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***. He further submits that no amount has been granted under the head loss of estate and compensation awarded by the Tribunal under other heads are also on the lower side. Accordingly, he prays for appropriate enhancement in favour of the appellants.

5. Per contra, the learned counsel appearing for the second respondent/insurer of the first respondent vehicle submitted that due to the rash and negligent driving of the driver of the third respondent lorry the said accident happened. Though the FIR is not an encyclopedia, the Tribunal based on the contents of the FIR, has fixed entire liability on the respondents 1 and 2 is not sustainable. Moreso, it is evident from the deposition of P.W.2 that the driver of the third respondent lorry alone is responsible for the said accident.



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However, without any oral and documentary evidence, the Tribunal has fixed the entire liability as against the respondents 1 and 2 which is *per se* unsustainable. Hence, it would suffice, if this Court may fasten 50% liability on the part of the fourth respondent which would be just and reasonable. Accordingly, he seeks appropriate modification of the award passed by the Tribunal.

6. The learned counsel appearing fourth respondent / insurer of the third respondent vehicle submits that due to the rash and negligent driving of the driver of the first respondent lorry, the Law Enforcing Agency has registered a criminal case against the driver of the first respondent. Hence, the fourth respondent is not liable to compensate the appellants / claimants. Therefore, the award passed by the Tribunal, fastening the entire liability on the part of the respondents 1 and 2 which is just and reasonable. Hence, the same does not require any interference of this Court.

7. Though the notice has been served on the respondents 1 and 3, no one



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appeared on their behalf. Considering the period of pendency of the appeal the same is disposed of based on the materials available on record.

8. Heard the learned counsel for the appellants / claimants and the learned counsel appearing on behalf of the second respondent and fourth respondent and perused the materials available on record.

9. Though the entire liability is fixed on the respondents 1 and 2 to pay the compensation, however, it is clear from the evidence of P.W.2 that the driver of the third respondent has driven the tipper lorry in a rash and negligent manner which resulted in capsizing of the lorry belonging to the first respondent and in order to disprove the same, the third and fourth respondents have not adduced any oral or documentary evidence except the FIR. It is to be pointed out that the FIR is not a conclusive proof nor is an encyclopedia for deciding the case. Further, FIR is not a substantive piece of evidence and it has to be substantiated by acceptable positive legal evidence. The FIR is only to set the criminal law in motion and no further. Hence, this Court is inclined to fasten 50% liability on the part of the second respondent and another 50%



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liability on the part of the fourth respondent by modifying the award passed by the Tribunal.

10. The factum and manner of the accident is described in the previous paragraph. 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 by the Tribunal. It is claimed by the appellants that though the deceased had earned a sum of Rs.4,500/- per month, however, without considering the same, the Tribunal has fixed the notional income at Rs.2,000/-. 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.4,500/- 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**



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Cases 680, the total income per month is quantified at Rs.6,300/-. Deducting $1/4^{\text{th}}$ towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.4,725/- per month and the deceased being aged about 21 years, as evidenced from the records, adopting the multiplier of 18 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.4,725/- * 12 * 18 = Rs.10,20,600/-, which is worked out as follows :-

Loss of Income	Amount (in Rs.)
Notional income (Per month)	4,500
Add: Future Prospects (Rs.4500 x 40%) (Per month)	1,800
	6,300
Less: Personal expenses ($1/4^{\text{th}}$) (Rs.6,300/- x $1/4$) (Per month)	1,575
	4,725
Notional income (per annum) (Rs.4,725/- x 12)	56,700
Multiplier	18
Total	10,20,600

11. A sum of Rs.10,000/- has been granted under the head of "loss of consortium", which is on the lower side and the same is enhanced to a sum of Rs.40,000/- to the first appellant. The Tribunal has awarded a sum of Rs.10,000/- under the head "loss of love and affection to the 2nd appellant"



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which is on the lower side and the same is enhanced to a sum of Rs.40,000/- each to the appellants 2 to 4. A sum of Rs.5,000/- has been granted under the head “Funeral expenses” which is also very meagre and the same is enhanced to a sum of Rs.15,000/-. A sum of Rs.3,000/- has been granted under the head “Transportation” which is also on the lower side and the same is enhanced to a sum of Rs.15,000/-. No amount has been granted under the head “loss of estate”, hence this Court is inclined to grant a sum of Rs.15,000/- toward the said head.

12. 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	4,32,000/-	10,20,600/- (enhanced)
Loss of consortium	10,000/-	40,000/- (enhanced)
Loss of love and affection	10,000/-	1,20,000/- (enhanced)
Funeral expenses	5,000/-	15,000/- (enhanced)



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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Transportation	3,000/-	15,000/- (enhanced)
Loss of estate	-	15,000/-
Total	4,60,000/-	12,25,600/-

13. The appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.4,60,000/- to Rs.12,25,600/-**. The second and fourth respondents are directed to deposit 50% : 50% of the compensation fixed above to the credit of M.C.O.P.No.401 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 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 as per the apportionment made by the Tribunal below. Further the Tribunal is directed to deposit the



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share of the second appellant / minor in an interest bearing fixed deposit with any one of the nationalized banks until she attains majority and the interest derived from out of the said deposit shall be paid to the mother of the minor claimant / Suguna every quarter to be utilized for the welfare of the said minor claimant till attaining majority. It is open to the minor claimant to file necessary application to establish the majority, at which point of time, the Tribunal is directed to transfer the entire amount lying in the fixed deposit directly to the bank account of the second appellant / minor claimant through RTGS within a period of two weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No
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1. Motor Vehicles Accident Claims Tribunal / Principal District Court,
Perambalur.

2. The Section Officer,
V.R. Section, High Court, Madras.

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