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C.M.A.No.862 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM:

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

C.M.A.No.862 of 2020

1. A.Jacob
2. J.Chandra
3. J.Soundarya

...Appellants

Vs.

1. E.Mallikarjuna Rao Kodali
2. The New India Assurance Company Limited,
Divisional Office, 2nd Floor Srivari Shopping Complex,
Near ARRS Multiplex,
Salem Town.
3. K.Senthil
4. IFFCO-TOKIO General Insurance Co. Ltd.,
Vasantham Road,
Salem – 4.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the judgment and decree dated 03.06.2015 in MCOP.No.1420 of 2012 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.



C.M.A.No.862 of 2020

WEB COPY

For Appellants : Mr.P.Jagadeesan

For Respondents : Service awaited, for R1
Mr.C.Ramesh Babu, for R2

JUDGEMENT

Challenging the judgment and decree dated 03.06.2015 passed in MCOP.No.1420 of 2012 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem, the claimants are before this Court.

2. The 1st and 2nd appellants are the parents of the deceased Iswariya and the 3rd appellant is the younger sister of the deceased. The case of the appellants is that, on 03.08.2012, when the deceased was travelling as a pillion rider in a Honda Activa bearing Regn.No.TN-30-AP-6174, owned by the 3rd respondent, insured with the 4th respondent, driven by her classmate one Pavithra, in order to get application for joining in the course of M.Sc. Post Graduation degree course in AVS Arts and Sciences College, Salem, a lorry bearing Regn.No.AP-16-TW-1544, owned by the 1st respondent insured with



C.M.A.No.862 of 2020

the 2nd respondent, driven by its driver in a rash and negligent manner came in the opposite direction and hit on the front right side of the scooter, as a result of which, the said Iswariya sustained grievous injuries all over her body and got admitted in the Hospital, however, subsequently she passed away. Thereby, the appellants herein being the dependents of the deceased, filed a claim petition claiming a sum of Rs.25,00,000/-. After contest, the Tribunal, vide impugned decree awarded a compensation of Rs.8,04,000/- and fastened the liability as against the 2nd respondent. Aggrieved with the said order, the present appeal has been filed by the claimants seeking enhancement of the compensation fixed.

3. Learned counsel appearing for the appellants submitted that admittedly, the above said accident occurred solely due to the rash and negligent driving of the driver of the 1st respondent vehicle, due to which, the daughter of the 1st and 2nd appellants lost her life. Further, the said accident occurred when the deceased went to get application for joining M.Sc. Post Graduation degree course from AVS Arts and Sciences College, Salem and if the said accident had not happened, the deceased could have earned more than



C.M.A.No.862 of 2020

Rs.30,000/- per month as salary, after completing her PG degree. While so, the Tribunal had taken the monthly income of the deceased as Rs.7,500/- only, which is on the lower side and even in which, the Tribunal had reduced 50% towards the personal expenses of the deceased and fixed the annual income as Rs.45,000/- which is not sustainable. Further, 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 head of loss of estate and the same is liable to be awarded. Accordingly, he prays for appropriate enhancement in favour of the appellants.

4. Per contra, the learned counsel appearing for the 2nd 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



C.M.A.No.862 of 2020

appeal.

WEB COPY

5. Heard the learned counsel for the appellants and the learned counsel appearing for the 2nd respondent and perused the materials available on record.

6. 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 had already completed UG course and was about to join PG course and after completion of which, the deceased would have earned an average salary of Rs.30,000/- per month, however, without considering the same, the Tribunal has fixed the notional income at Rs.7,500/-. 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.12,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of



C.M.A.No.862 of 2020

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.16,800/-. Deducting 1/2nd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.8,400/- 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.8,400/- * 12 * 18 = Rs.18,14,400/-, which is worked out as follows :-

Loss of Income	Amount (in Rs.)
Notional income (Per month)	12,000
Add: Future Prospects (Rs.12,000 x 40%) (Per month)	4,800
	16,800
Less: Personal expenses (1/2 nd) (Rs.16,800/-x1/2) (Per month)	8,400
	8,400
Notional income (per annum) (Rs.8,400/- x 12)	1,00,800
Multiplier	18
Total	18,14,400

7. A sum of Rs.40,000/- and Rs.10,000/- has been granted to the 1st & 2nd appellants and the 3rd respondent respectively under the head of "loss of



C.M.A.No.862 of 2020

love and affection", which is on the lower side and the same is enhanced to a sum of Rs.40,000/- each. Further, no amount has been granted under the heads of "loss of estate" and "transportation charges" Therefore, a sum of Rs.15,000/- shall be awarded under these heads.

8. 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	7,29,000/-	18,14,400/- (enhanced)
Loss of love and affection (Rs.40,000/- x 3)	50,000/-	1,20,000/- (enhanced)
Transportation charges	-	15,000/-
Funeral Expenses	25,000/-	25,000/-
Loss of estate	-	15,000/-
Total	8,04,000/-	19,89,400/-

9. The appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.8,04,000/-** to **Rs.19,89,400/-**. The 2nd respondent-Insurance Company is directed to deposit



C.M.A.No.862 of 2020

the said amount to the credit of M.C.O.P.No.1420 of 2012 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, upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants. There shall be no order as to costs in the present appeal.

12.12.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

1.The Motor Accidents Claims Tribunal, Special District Court,
Salem.

Page No.8 of 10



C.M.A.No.862 of 2020

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

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C.M.A.No.862 of 2020

M.DHANDAPANI, J.

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C.M.A.No.862 of 2020

12.12.2023