



C.M.A.No.58 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.58 of 2019

1.Emily Anitha

2.Minor.A.Angel Vanya

... Appellants/Petitioners

Vs.

1.M.R.Shakthi Gajendran

2.B.Minimol

3. New India Assurance Company Ltd,
Its registered head office at New India
Assurance Buildings, No.87, M.G.R.Road,
Fort Mumbai-400001.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the award made in Judgement and decree dated 17.07.2017 made in M.C.O.P.No.466 of 2014 on the file of the Motor Accident Claims Tribunal, (Special District Court), Erode seeking enhancement of the award amount.



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For Appellants : Mr.C.S.Saravanan
For Respondents : Notice not ready [R1] & [R2]
Mr.Michel Visuvasam for [R3]

JUDGEMENT

Aggrieved by the compensation awarded by the Motor Accident Claims Tribunal, (Special District Court), Erode in M.C.O.P.No.466 of 2014 dated 17.07.2017, 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 wife & daughter of deceased Arul Rozario. On 11.05.2014, at about 9.30 a.m., when the wife of the deceased Emily Anitha was travelling as a pillion rider in the motorcycle along with her deceased husband Arul Rozario on the extreme left side of road, the Maxi cab tempo traveller bearing registration No.TN 20 CY 3028 belonging to the 1st respondent, insured with the 3rd respondent, which was coming in the same direction behind the deceased vehicle, driven by the 1st respondent in a rash and negligent manner, dashed against the motorcycle of the deceased thereby



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causing an accident to the deceased, due to which, the wife who was travelling as a pillion rider, fell down on the road and sustained grievous injuries. Though immediately after the accident, the deceased was taken to the Government Hospital, Mettupalayam and given treatment and later taken to the Coimbatore Medical College hospital for treatment, he died on his way to the hospital. Aggrieved by the loss incurred in view of the said accident, the appellants have filed a claim petition in M.C.O.P.No.466 of 2014 claiming compensation amount of Rs.50,00,000/-.

3. Before the Tribunal, the 1st appellant examined herself as P.W.1 to and marked Ex.P.1 to Ex.P.46. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal awarded a sum of Rs.11,85,000/- 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, at the time of accident, the deceased was earning nearly a sum of Rs.60,000/- per



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month. However, without considering the same, the Tribunal has fixed the notional income at Rs.7,500/-, which is on the lower side and the Tribunal has not added future prospects, which requires to be reconsidered by this Court. Further, the Tribunal has not added future prospects as per the decision rendered by 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.***, which also requires to be reconsidered by this Court. 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 3rd 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 though the deceased had earned a sum of Rs.60,000/- per month, however, without considering the same, the Tribunal has fixed the notional income at Rs.7,500/- per month which requires enhancement. 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 25%, 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.15,000/-. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.10,000/- per month and the deceased being aged about 42 years, as evidenced from the records, adopting the



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multiplier of 14 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.10,000 x 12 x 14 = 16,80,000/- 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 25%) (Per month)	+ 3,000
	15,000
Less: Personal expenses (1/3 rd) (Rs.15,000/- x 1/3) (Per month)	- 5,000
	10,000
Notional income (per annum) (Rs.10,000 x 12)	1,20,000
Multiplier	x14
Total	16,80,000

8. A sum of Rs.1,00,000/- has been granted to the first appellant under the head of "loss of consortium", which is excessive and the same is reduced to a sum of Rs.40,000/-. Further, a sum of Rs.1,50,000/- has been awarded to the appellants 2 and 3 under the head of "loss of love and affection", which is also excessive and the same is reduced to a sum of Rs.40,000/-.

9. In the above circumstances, the compensation awarded by the



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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	9,00,000/-	16,80,000/- (enhanced)
Transport to hospital	10,000/-	10,000/-
Funeral Expenses	25,000/-	25,000/-
Loss of love and affection	1,50,000/-	40,000/- (reduced)
Loss of Consortium	1,00,000/-	40,000/- (reduced)
Total	11,85,000/-	17,95,000/-

10. The appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.11,85,000/-** to **Rs.17,95,000/-**. The third respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.466 of 2014 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



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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 any, required. The Tribunal below shall disburse the enhanced amount upon proof of payment of Court fee is produced by the appellants/claimants. There shall be no order as to costs in the present appeal.

16.11.2023

Index : Yes / No
Neutral Citation Case : Yes / No
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To

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



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M.DHANDAPANI, J.

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