



C.M.A.No.2257 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.11.2023**

CORAM:

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

C.M.A.No.2257 of 2018

Ibrahim

... Appellant

Vs.

1.Asokan

2.The Manager,

The New India Assurance Company Ltd.,
Commercial Complex, CSI Building,
2nd Floor, No.1, Officers Line,
Vellore.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.07.2014 made in M.A.C.T.O.P.No.658 of 2013 on the file of Motor Accident Claims Tribunal, Tiruvannamalai, (In the Court of Special Judge, Tiruvannamalai).

For Appellant : Ms.A.Subadra

For Respondents : No appearance [R1]
Mrs.G.Sukumari [R2]



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JUDGEMENT

The claimant is before this Court seeking an enhancement of the award passed by the Motor Accidents Claims Tribunal, (Special Judge, Tiruvannamalai), in M.C.O.P.No.658 of 2013, dated 10.07.2014.

2. The facts in brief are as follows :-

(i) The appellant is the younger brother of the deceased Bachamiyan.

On 13.04.2013, at about 08.00 a.m., the deceased was walking in the extreme left side of the road in soil path near Nannan Readymade Shop at Chengam Town i Chengam to Polur Road. At that time, the first respondent drove his TVS XL Super Heavy Duty two wheeler bearing Reg.No.TN 25 AF 1067, from Millath Nagar towards New Bus stand in a rash and negligent manner, without observing any rules of the road, in high speed and dashed against the deceased and thereby, he sustained grievous injuries. Immediately, he was admitted in R.K.Hospital at Chengam and thereafter, he took treatment in Government Hospital in Vellore and Chennai and he



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died. Therefore, the appellant/claimant filed a petition under Section 166 of Motor Vehicles Act, 1988, and Rule 3 of the Motor Vehicles Rules claiming compensation of Rs.20,00,000/- before the Motor Accident Claims Tribunal, (Special Judge, Tiruvannamalai), in M.C.O.P.No.658 of 2013.

3. Before the Tribunal, the appellant examined three witnesses viz., P.W.1 to P.W.3 and marked 7 documents viz., Ex.P.1 to Ex.P.7. On the side of the respondents, they have examined two witnesses viz., R.W.1 and R.W.2 and marked 5 documents viz., Ex.R.1 to Ex.R.5. After adjudication, the Tribunal, allowed the petition in part and awarded a sum of Rs.4,18,000/- as compensation to the claimant. Not satisfied with the same, the present appeal has been filed by the appellant/claimant seeking enhancement.

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



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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 compensation awarded by the Tribunal under the heads of loss of estate and funeral expenses, which also requires to be reconsidered by this Court. Accordingly, he prays for appropriate enhancement in favour of the appellant.

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 appellant and the learned counsel appearing on behalf of the second respondent and perused



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the materials available on record.

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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. It is claimed by the claimant that at the time of death, the deceased was working as a Tea vendor and earned a sum of Rs.15,000/- 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.6,000/- 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**



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(16) *Supreme Court Cases 680*, the total income per month is quantified at Rs.7,500/-. Deducting 50% towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.3,750/- per month and the deceased being aged about 44 years, as evidenced from the records, adopting the 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.3,750/- * 12 * 14 = Rs.6,30,000/-, which is worked out as follows :-

Loss of Income	Amount in Rs.
Notional income (Per month)	6,000
Add: Future Prospects (Rs.6,000 x 25%) (Per month)	1,500
	7,500
Less: Personal expenses (50%) (Rs.7,500/- x 50%) (Per month)	3,750
	3,750
Notional income (per annum) (Rs.3,750/- x 12)	75,000
Multiplier	14
Total	6,30,000

8. Further, the Tribunal had awarded a sum of Rs.20,000/- towards



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loss of love and affection and Rs.20,000/- towards funeral expenses. This Court finds that the compensation awarded under the head loss of love and affection is just and reasonable and does not require any interference. However, insofar as the compensation awarded towards funeral expenses is concerned, this Court feels that a sum of Rs.10,000/- would be just and reasonable compensation.

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	3,78,000/-	6,30,000/- (enhanced)
Loss of love and affection	20,000/-	20,000/-
Funeral Expenses	20,000/-	10,000/- (reduced)
Total	4,18,000/-	6,60,000/-

10. The appeal is allowed and the impugned Award of the Tribunal is



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modified by enhancing the compensation amount from **Rs.4,18,000/-** to **Rs.6,60,000/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.658 of 2013 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 four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the award amount, less, the amount, if any already withdrawn. The appellant/claimant is 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 claimant. There shall be no order as to costs in the present appeal.

01.11.2023

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

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- 1.The Motor Accidents Claims Tribunal,
(Special Judge, Tiruvannamalai).
- 2.The Section Officer,
V.R. Section,
High Court, Madras.