



C.M.A.No.3625 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2023

PRONOUNCED ON : 18.04.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

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1.Saraswathy
2.Minor R.Sridhar
3.Minor R.Sriprakash
(2 & 3 Minors represented by
their mother and Guardian Saraswathy)
4.Ramayi

... Appellants

vs.

1.Atthayammal
2.M/s.National Insurance Co. Ltd.,
Represented by its Divisional Officer-I,
LRN Complex,
Salem-7.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the decree and judgment dated 27.11.2017 made in M.C.O.P.No.1546 of 2014 on the file of Motor Accident Claims Tribunal (Special District Court), Salem.

For Appellants : Mr.Varadha Kamaraj

For Respondents : Mr.D.Bhaskaran [R2]
R1– Notice served -
No Appearance



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JUDGMENT

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The appellants No.1 to 4 herein have filed this Civil Miscellaneous Appeal against the judgment and decree passed in M.C.O.P.No.1546 of 2014 on the file of Motor Accident Claims Tribunal (Special District Court), Salem for enhancement of compensation.

2. The claim petition was filed by the legal representatives of one Ramakrishnan, who died in the road accident that had taken place on 23.08.2014 under Section 166 of Motor Vehicles Act claiming compensation of Rs.30,00,000/-. The appellants/claimants are wife, sons and mother of the deceased Ramakrishnan.

3. The Tribunal has passed an award for an amount of Rs.14,87,500/- with interest at the rate of 7.5% p.a., from the date of filing of the petition till the date of realisation.

4. The learned counsel for the appellant/claimants would argue that the monthly income of the deceased was fixed by the Tribunal as Rs.7,500/- is not correct and ought to have fixed his income at Rs.15,000/- p.m. No amount was awarded under the heads of love and affection and



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the amount awarded under the head of loss of consortium to the 1st appellant is insufficient and a meagre amount was awarded under the head of funeral expenses.

5. Per contra, learned counsel for the Insurance Company would vehemently contend that the Tribunal after considering the oral and documentary evidence of the claimant side passed an award for an amount of Rs.14,87,500/- with 7.5% interest p.a., from the date of filing of petition till date of deposit is quite reasonable.

6. Heard the rival submissions put forth by the learned counsels of both sides and perused the materials available on record.

7. As per plus two mark sheet of the deceased Ramakrishnan, Ex.- P10 his date of birth is mentioned as 16.04.1977. Based on the same, the Tribunal has fixed the age of the deceased Ramakrishnan as 38 years. Though it was stated that the deceased Ramakrishnan was an agriculturist and cultivating their family lands and getting Rs.7,500/- p.m., to substantiate the same it could be seen from Ex.P7 patta that to an extent of 3.54 Hectares dry land stands in the name of the deceased Ramakrishnan. Based on the same, the Tribunal has fixed his income as



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Rs.7,500/- p.m., as he died at the age of 38 years, for future prospects, 40% of the said income was added and income was calculated as Rs.10,500/- p.m.

8. In **Syed Sadiq v. United India Insurance Company Ltd.**, reported in **2014 (1) TN MAC 459 (SC)**, wherein the Hon'ble Supreme Court in an injury case of a claimant, aged about 24 years as he was stated to be a vegetable vendor, considering the present day economy and rising prices in agricultural products his income was fixed at Rs.6,500/- p.m. Around 9 acres of land was being in possession of the deceased Ramakrishnan, as per Ex.P7 patta, PW1-wife of the deceased would also state that he was also cultivating the lands on lease basis. Taking into account of the above said oral and documentary evidence, it is reasonable to fix the income of the deceased Ramakrishnan as Rs.9,000/- p.m.

9. As per law laid down in **National Insurance Co. Ltd., v. Pranay Sethi and others**, reported in **2017 (2) TN MAC 609(SC)**, wherein, it is held that in case of persons who are self-employed persons who are aged below 40 years, 40% of the income fixed to be added as future prospects and the income to be calculated. Therefore, based on the said principles, the following formula emerges:



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$\text{Rs.9,000/-} + (\text{Rs.9,000/-} \times 40\%) = \text{Rs.3,600/-} = \text{Rs.12,600/-}$.

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10. With regard to deduction for personal and living expenses, in the case of **Smt.Sarla Verma and Others v. Delhi Transport Corporation and Another** reported in **2009 (2)TN MAC 1 (SC)**, wherein the Hon'ble Supreme Court has held that if the deceased is a married person, and number of dependents of the family members are 4 to 6, $\frac{1}{4}^{\text{th}}$ of the monthly income to be deducted. While calculating the loss of income, it would come to Rs.9,450/- (Rs.12,600/- - Rs.3,150/-).

11. In respect of the multiplicand, a table is given in the judgment cited supra, wherein the age group of the persons between 35 and 40, the corresponding multiplicand is 15. Therefore, the loss of income of the deceased is calculated as follows:

Calculation

Notional Income = Rs.9,000/-

40% Future Prospects = Rs.3,600/-

Total = Rs.9,000/- + Rs.3,600/- = Rs.12,600/-

After $\frac{1}{4}^{\text{th}}$ deduction = Rs.9,450/-

Loss of Income

$\text{Rs.9,450/-} \times 12 \times 15 = \text{Rs.17,01,000/-}$.



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12. No amount was granted under the head of loss of love and affection, therefore, an amount of Rs.20,000/- each to the claimants 2 to 4 is granted towards love and affection and Rs.5,000/- is granted towards transportation. In other aspects, the compensation awarded by the Tribunal appears to be reasonable and needs no interference. The Compensation awarded by the Tribunal is reworked as tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Future loss of income	Rs.14,17,500/-	Rs.17,01,000/-	Enhanced
2	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
3	Loss of Consortium	Rs. 40,000/-	Rs. 40,000/-	Confirmed
4	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
5	Loss of Love and Affection (Claimants 2 to 4)	NIL	Rs. 60,000/-	Granted
6	Transport Charges	NIL	Rs. 5,000/-	Granted
	Total	Rs.14,87,500/-	Rs.18,36,000/-	

13. Thus, the compensation awarded by the Tribunal is enhanced from Rs.14,87,500/- to **Rs.18,36,000/-** which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.



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14. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.14,87,500/- to **Rs.18,36,000/-**.

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.18,36,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.1546 of 2014 on the file of Motor Accident Claims Tribunal (Special District Court), Salem, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, as apportioned by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing cheque application before the Tribunal. The share of the minors shall be deposited in any one of the nationalized bank till they attain majority and the 1st appellant, mother of the minors Saraswathy, shall be permitted to withdraw quarterly interest from the said amount. The claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the



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enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants.

18.04.2023

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

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



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R.KALAIMATHI, J.,

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Pre-delivery Judgment in
C.M.A.No.3625 of 2019

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