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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.12.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)NOs.247 and 248 OF 2021

C.M.A(MD)NO.247 OF 2021

1.Sudalaimani

2.Esakkiammal :Appellants/Petitioners

.VS.

1.Titus Nallathambi

2.The New India Assurance Company Limited,
through its Divisional Manager,
No.248B, Kamarajar Salai,
Madurai – 625 009. : Respondents/Respondents

C.M.A(MD)NO.247 OF 2021

Esakkiammal :Appellant/Petitioner

.VS.

1.Titus Nallathambi

2.The New India Assurance Company Limited,
through its Divisional Manager,
No.248B, Kamarajar Salai,
Madurai – 625 009. : Respondents/Respondents

COMMON PRAYER: Civil Miscellaneous Appeals filed under
Section 173 of the Motor Vehicles Act as against the judgments and
decrees made in M.C.O.P.Nos.407 and 409 of 2017,dated



24.06.2020, on the file of the Motor Accidents Claims Tribunal(Principal District Judge), Tirunelveli.

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For Appellant/s :Mr.T.Selvakumaran
in both appeals

For Respondent-1 :No appearance
in both appeals

For Respondent-2 :Mr.D.Malaichamy
in both appeals

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed seeking enhancement of compensation awarded in M.C.O.P.Nos.407 and 409 of 2017,dated 24.06.2020, on the file of the Motor Accidents Claims Tribunal(Principal District Judge), Tirunelveli.

C.M.A(MD)No.247 of 2021

2.The appellants are the parents of the deceased Ponselvam. On 30.01.2017 at about 7.00 a.m., the deceased was travelling in a motor cycle bearing Registration No. TN 72 AP 2567 from Palayamkottai to Rajapathi.When the vehicle reached near ICL New Colony on the Madurai-Tirunelveli National Highways, a Maruthi Alto Car bearing Registration NO.TN 59 AH 2862 had come from south to north in a rash and negligent manner and dashed against the motor



cycle from behind. As a result, the deceased along with rider and pillion rider has fallen down and sustained serious injuries and subsequently he died of the injuries.

3.C.M.A(MD)No.248 of 2021 is filed for enhancement of compensation for the injuries sustained by the appellants.

4.The second respondent filed counter stating that the rider of the two wheeler was solely responsible for the accident.Three persons travelled in the motor cycle and that was the cause for the accident. Further the compensation claimed is excessive.

5.During the enquiry before the Tribunal, P.W.1 to P.W.4 were examined and Ex.P1 to Ex.P22 were marked on the side of the Petitioners/appellants and no oral or documentary evidence was produced on the side of the respondents.

6.On going through the oral and documentary evidence, the learned Tribunal awarded a sum of Rs.8,96,000/- in M.C.O.P.No. 407 of 2017, which reads as follows:



1.Loss of Income	- Rs.7,56,000/-
2.Funeral Expenses	-Rs. 15,000/-
3.Transport Expenses	-Rs. 10,000/-
4.Loss of love and affection	
	-Rs.1,00,000/-
5.Loss of Estate	-Rs. 15,000/-

total	-Rs.8,96,000/-

and in M.C.O.P.No.409 of 2017, the Tribunal awarded a sum of Rs. 51,686/- which reads as follows:

1.For simple injuries	-Rs.35,000/-
2.For medical expenses	
	-Rs.16,686/-

total	-Rs.51,686/-

7.The learned counsel for the appellants submitted that the compensation in both the cases is low. It is his submission that the deceased was aged 14 years at the time of accident and he was a bright student. The learned Tribunal had taken a sum of Rs.6000/- as notional income. The notional income of Rs.10,000/- would have been taken for computing the loss of dependency. Similarly, the claimant in M.C.O.P.No.409 of 2017 has suffered serious injuries, but it was not considered by the Tribunal. Therefore both the appellants have filed appeals seeking enhancement of compensation.



8. In reply to the submission, the learned counsel for the Insurance Company submitted that the learned Tribunal had rightly fixed Rs.6,000/- as notional income and calculated the compensation awarded to the claimants in M.C.O.P.No.407 of 2017. The claimant in M.C.O.P.No.409 of 2017 has suffered only simple injuries and thus the compensation awarded was reasonable and adequate.

9. This Court considered the rival submissions made on either side and perused the materials placed before this Court.

10. There is no appeal filed by the Insurance Company as against the award passed by the Tribunal.

11. The only issue that requires to be considered is whether the quantum of compensation awarded in both the cases are just and appropriate?

C.M.A(MD)No.247 of 2021

12. It is not in dispute that the deceased concerned in M.C.O.P.No.407 of 2017 was a student aged 14 years. The learned



Tribunal adopted notional income of Rs.6,000/-. The learned counsel for the appellants relied on the judgment in the case of **Mekala .vs. M.Malathi reported in 2014(2) TNMAC 6(SC) : 2014 ACJ 1441**, wherein, the Honourable Supreme Court determined the notional income of a 12th standard student at Rs. 10,000/- and 50% was added towards future prospects.

13.Considering the age of the deceased, his future prospects,had he been alive,this Court is of the view that a sum of Rs.8000/- may be fixed as notional income for the deceased. The deceased was aged 14 years at the time of accident. As per **Smt. Sarla Verma .vs. Delhi Transport Corporation and another reported in 2009(2) TN MAC 1(SC)**,40% of the notional income is added towards the future prospects. The monthly notional income comes to Rs.8000/- + Rs.3200/- = Rs.11200/-. Since the deceased was a bachelor, 50% of the notional income has to be deducted towards his personal expenditure. 50% of the notional income is Rs. 5600/- . - Rs.5600/- = Rs.5600/-. The proper multiplier to be adopted for the age group of the deceased is '15'.Thus the loss of dependency is Rs.5600/- x 12 x 15 = Rs.10,08,000/-. As per **General Insurance Company Limited .vs. Nanu Ram @ Chuhru Ram reported in 2018 (2) TN MAC 452(SC)**, the



appellants are entitled to maximum of Rs.40,000/- each towards loss of filial consortium and hence award of Rs.1 lakh awarded under the head of loss of love and affection is converted as loss of filial consortium and the same is reduced to Rs.80,000/-.The Tribunal has awarded a sum of Rs.15,000/- for funeral expenses and Rs.10,000/- towards transport expenses and Rs.15,000/- towards loss of estate and the above said amounts seems to be just and reasonable and the same are confirmed. Thus this Court has modified the award of the Tribunal is as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of income	Rs. 7,56,000/-	Rs. 10,08,000/-	enhanced
2	For funeral expenses	Rs.15,000/-	Rs.15,000/-	same
3	For loss of love and affection	Rs. 1,00,000/-	-----	Not awarded
	For transportation	Rs.10,000/-	Rs.10,000/-	Same
5	For loss of filial consortium to the claimants 1 and 2	Rs.40,000/- each	Rs.80,000/-	Newly awarded
6	For loss of estate	Rs.15,000/-	Rs.15,000/-	same
7	Total	Rs. 8,96,000/-	Rs. 11,28,000/-	enhanced

Thus the claimants are entitled to a sum of Rs.11,28,000/- with



interest at the rate of 7.5% from the date of claim petition till the date of realization.

C.M.A(MD)No.248 of 2021(MC.OP.No.409 of 2017)

14. With regard to the claim of enhancement of compensation in M.C.O.P.No.409 of 2017, it is seen from the evidence of P.W.3 Doctor that the appellant/Petitioner suffered only simple injury. For the simple injuries, the learned Tribunal awarded a sum of Rs. 35,000/-. That apart, he was also awarded a sum of Rs.16,686/- towards medical expenses and totally awarded a sum of Rs. 51,686/-, rounded off to Rs.51,700/-. This award amount, in the considered view of this Court, seems to be just and appropriate and it requires no enhancement and the award of the Tribunal is confirmed.

C.M.A(MD)No.248 of 2021:

15. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the award of the Tribunal. The respondents 1 and 2 are jointly directed to deposit the award amount of Rs.51,700/- with interest at the rate of 7.5% from the date of claim petition, till the



date of realization, as ordered by the Tribunal, together with proportionate accrued interest and costs, less the award amount if any already deposited, to the credit of claim petition, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the award amount so deposited, less the award amount if any already withdrawn, by filing necessary application before the Tribunal. No costs.

C.M.A(MD)No.247 of 2021

16.In the result, this Civil Miscellaneous Appeal is allowed in part and the award amount is enhanced from Rs.8,96,000/- to Rs. 11,28,000/- with interest at the rate of 7.5% pa from the date of claim petition till the date of realization. The respondents 1 and 2 are jointly and severally directed to deposit the above said enhanced award amount, with accrued interest and costs, less the award amount if any already deposited to the credit of claim petition, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first claimant is entitled to a sum of Rs.5,28,000/- and the second claimant is entitled to a sum of Rs.6,00,000/- with proportionate accrued



interest and costs, less the award amount if any already withdrawn, by filing necessary application before the Tribunal. The claimants are directed to pay the excess Court fee, if any, towards the enhanced award amount. Only on such deposit being made, Registry is directed to draft the decree in this appeal. No costs.

15.12.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

- 1.The Principal District Judge,
(Motor Accidents Claims Tribunal),
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN,J.

vsn

**COMMON JUDGMENT MADE IN
C.M.A(MD)NOs.247
and 248 of 2021**

15.12.2023