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C.M.A.(MD)No.410 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.07.2023

Pronounced on : 18.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.410 of 2023

1.Soorya

2.Minor Dinesh

3.Minor Iniya

...Appellants/Petitioners

(Minor 2nd and 3rd appellants through her
mother and next guardian 1st appellant)

Vs.

1.Annalakshmi

2.National Insurance Company Ltd.,
Through its Branch Manager,
No.135-1, Rose Building Main Road,
Kovilpatti.

3.Senthilvel

4.Viyagulamary

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.313 of 2015 on the file of the Motor Accident Claims Tribunal (Special Sub Judge), Tirunelveli, dated 10.11.2021.



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For Appellants : Mr.T.Selvakumaran
For R2 : Mr.D.Sivaraman
For R3 & R4 : Mr.M.P.Senthil

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the award dated 10.11.2021 passed in M.C.O.P.No.313 of 2015 by the Motor Accident Claims Tribunal/Special Sub Judge, Tirunelveli.

2. The petitioners/claimants in M.C.O.P.No.313 of 2015 are the appellants herein.

3. The petitioners/claimants are the dependents of the deceased Edison, who died in a motor traffic accident.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 313 of 2015 is adopted hereunder.

5. The brief facts of the case:

The deceased Edison was riding his motorcycle bearing registration No.TN-69 AU-4945 from Kovilkpatti to Sathankulam on



19.01.2015. At about 9.10 p.m when he was riding near Jeya Weigh Bridge, a lorry bearing registration No.TN 33-E-3335 belonging to the first respondent and insured with second respondent came from opposite direction, driven by its driver in a rash and negligent manner and dashed against him and he died due to fatal multiple injuries. The deceased was working as supervisor in MM Engineering at Coimbatore and was earning Rs.30,000/- p.m. The petitioners are depending on the income of the deceased Edison. The vehicle of the first respondent was insured with the second respondent. Hence, the petitioners 1 to 4 filed a claim petition seeking compensation of Rs.50,00,000/-.

6. The second respondent/Insurance Company objected the claim petition by contending that the first respondent's vehicle was not driven by its driver in a rash and negligent manner. The deceased in a drunken condition was riding his motorcycle and due to his negligence, only the accident occurred. The petitioners are not entitled to claim from the second respondent.

7. The Tribunal has tried the M.C.O.P.No.313 of 2015 and both sides adduced oral and documentary evidence. After hearing both and after considering the evidences, the Tribunal has passed the impugned



order and awarded a total compensation of Rs.17,83,600/- with interest.

Aggrieved by the said award, the petitioners have preferred this Civil Miscellaneous Appeal.

8. Heard both side and perusal the records in this Civil Miscellaneous Appeal.

9. The learned counsel for the petitioners has submitted that the deceased Edison was working as project supervisor in MM Engineers, Coimbatore. The deceased was earning Rs.30,000/- p.m, of course, the petitioners have not produced any document to prove the salary. The Tribunal based on **Sarala Verma case** has fixed a notional income of Rs.9,000/- p.m. The Division Bench of this Court has adopted considering the cost of inflation index for the subsequent years and thereby the income of the deceased has to be taken as Rs.15,000/-. The Tribunal has correctly added future prospects as 40% and has correctly taken multiplier as '17'. The Tribunal has failed to award compensation under the head of loss of love and affection to petitioners 2 and 3. In support of his argument regarding income the learned counsel has relied on the citation of this Court reported in **2019 (1) TN MAC 54 (DB)** and **2022 (1) TN MAC 663 (DB)**.



10. The learned counsel for the respondent has contended that in the absence of any proof of income, the Tribunal has correctly fixed the notional income of Rs.9,000/- p.m considering the price index. However, the respondent/Insurance Company concedes to fix Rs.11,000/- as notional income of the deceased. In other respect of the award, the Tribunal has correctly awarded the compensation.

11. Considered both side arguments and perused the records of the case. There is no dispute by both sides that the accident was taken place due to the rash and negligent driving of the first respondent's driver and the deceased age was 30 at the time of accident. The only dispute is regarding income of the deceased and loss of love and affection not awarded to petitioners 2 and 3.

12. On hearing both sides and on perusal of records, it is clear that the petitioners state that the deceased was working as project supervisor and the same was not strongly disputed by the respondents and that both side have agreed to fix notional income of the deceased as Rs.11,000/-. The Division Bench of this Court has also held in **2019 (1) TN MAC 54** that the notional income of the deceased has to be fixed after applying the inflation index. Therefore, considering the above, this Court fixes the



notional income of the deceased as Rs.11,000/-. Both side have not raised any question with regard to 1/3rd deduction towards own expenses of the deceased and also 40% future prospects as fixed by the Tribunal. Applying the same, the income of the deceased after adding 40% prospects is Rs.15,400/- (Rs.11,000/- + 4,400/- (40% of Rs.11,000/-) and after deducting 1/3rd personal expenses of the deceased. Considering the age of the deceased as 30, the multiplier '17' is correct as per Sarala Verma case. Therefore, the loss of income is arrived as Rs.15,400 x 2/3 x 12 x 17 = Rs.20,94,400/-.

13. While considering the loss of consortium, the Tribunal has only awarded Rs.40,000/- to the first petitioner alone. As per dictum laid down by the **Hon'ble Supreme Court in Pranay Sethi case (2017 (2) TNMAC 609(SC))**, each dependents of the deceased are also entitled. Therefore, the petitioners 2 and 3 are also entitled to Rs.40,000/- each towards loss of consortium and loss of love and affection. It is not disputed by the learned counsel for the respondents.

14. It is not disputed by both sides in respect of sum of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.



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15. Thus, this Court holds that the total compensation payable to the appellants/petitioners/claimants in M.C.O.P.No.313 of 2015 as follows:

Sl. No.	Description	Amount awarded by the Tribunal
1.	Loss of income (Rs.15,400 x 2/3 x 12 x 17)	Rs.20,94,400/-
2.	Towards funeral expenses	Rs. 15,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Loss of consortium to the 1 st petitioner, being wife of the deceased.	Rs. 40,000/-
5.	Loss of consortium and loss of love and affection for petitioners 2 & 3 (Rs.40,000/- x 2) being children of the deceased	Rs. 80,000/-
	Total	Rs. 22,44,400/-

Therefore, the petitioners 1 to 3/claimants in M.C.O.P.NO.313 of 2015 are entitled to Rs.22,44,400/-. Therefore, to that extent, the compensation awarded by the Tribunal is enhanced and fixed as Rs.22,44,400/-.



16. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is increased from Rs.17,83,600/- to Rs.22,44,400/- (Rupees Twenty Two Lakhs Forty Four Thousand and Four Hundred only).

(iii) The first claimant/wife of the deceased, who is the first appellant herein is entitled to receive a sum of Rs.6,00,000/-, the claimants 2 and 3 minor children of the deceased, who are appellants 2 and 3 herein are entitled to receive a sum of Rs.7,22,200/- each and the 3rd and 4th respondents who are parents of the deceased are entitled to receive a sum of Rs.1,00,000/- each with proportionate interests and costs.

(iv) The second respondent/Insurance Company is directed to deposit the entire compensation amount of Rs.22,44,400/- (Rupees Twenty Two Lakhs Forty Four Thousand and Four Hundred only), less the amount already deposited, 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.313 of 2015 on the file of the Special Subordinate Judge/Motor Accident Claims Tribunal, Tirunelveli within a period of six weeks from the date of receipt of a copy of this order.



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(v) On such deposit being made by the second respondent/Insurance Company, the amount payable to the minor second and third appellants to be deposited in any one of the Nationalized Bank till their attaining majority and the first appellant/guardian is entitled to receive interest payable on the said deposit once in three months. The first appellant and the third and fourth respondents are permitted to withdraw their entire share amount as apportioned by this Court with proportionate interest and cost by filing appropriate application before the Tribunal, less the amount already withdrawn if any.

18.08.2023

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

vsd

To

- 1.The Motor Accident Claims Tribunal (Special Sub Judge),
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Judgment made in
C.M.A(MD)No.410 of 2023

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