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C.M.A.(MD)No.571 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.07.2023

Pronounced on : 02.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.571 of 2023

1.L.Pandi

2.P.Sundaramoorthy

3.P.Sumathi

4.P.Kanagasundari

...Appellants/Petitioners

Vs.

1.R.Ramesh

2.United India Insurance Co.Ltd.,

Branch Office Door No.1E,

Balavinayagar Koil Street,

Thoothukudi,

through its Branch Manager.

...Respondents/Respondents

(The 1st respondent was set ex-parte before the Tribunal and the award passed as against the 2nd respondent herein. Hence, the 1st respondent may be dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree dated 14.07.2021 made in M.C.O.P.No.359 of 2019 on the file of the III Additional District Judge, Tirunelveli and consequently enhance the compensation for a sum of Rs.19,23,400/- from Rs.7,23,400/- and allow the Civil Miscellaneous Appeal.



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For Appellants :Mr.V.Sasikumar

For R2 :Mr.I.Robert Chandrakumar

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the Award dated 14.07.2021 passed in M.C.O.P.No.359 of 2019 by the Motor Accident Claims Tribunal/III Additional District Judge, Tirunelveli.

2. The petitioners/claimants in M.C.O.P.No.359 of 2019 are the appellants herein.

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

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 359 of 2019 is adopted hereunder.

5. The brief facts of the case:

The deceased Parvathy along with her friends was going to pilgrimage to Murugan Temple by walking along the Kalingapatti to



Tiruchendur road on 03.01.2019. On the same day, at about 10.40 a.m when she was walking left side of the Tiruchendur-Tuticorin road from south to north, a TATA Indica car bearing registration No.TN-69-BA-0446, belonging to the first respondent, driven by its driver in a rash and negligent manner from opposite side and dashed against her and she died on the spot due to fatal multiple injuries. The deceased was doing transport business engaging four cars and thereby was earning Rs. 30,000/- p.m. The petitioners are depending on the income of the deceased Parvathy. The vehicle of the first respondent was insured with the second respondent. Hence, the petitioners 1 to 4 filed the 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 driver of the first respondent's vehicle was not having any driving licence and the first respondent violated the policy conditions. The petitioners are not entitled to claim from the second respondent.

7. The Tribunal has tried the M.C.O.P.No.359 of 2019 and both side 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.7,23,400/- with interest. Aggrieved by the said award, the appellants/petitioners have preferred this Civil Miscellaneous Appeal.

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

9. During the course of arguments, 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 55 at the time of accident, though the petitioners mentioned as 51 years in the petition. The only dispute is regarding income of the deceased and loss of love and affection not awarded to the petitioners 2 to 4.

10. The learned counsel appearing for the revision petitioners has submitted that the Tribunal has not appreciated the evidence adduced by the petitioners side with regard to income of the deceased. The deceased was running travel business by engaging 4 cars owned by her. The Tribunal has fixed Rs.6,000/- p.m as notional income without taking into consideration of Ex.P.6 registration certificates of four cars stood in the



name of the deceased. The Tribunal failed to note that the names of the cars were transferred after the death of the deceased. The Hon'ble Supreme Court has fixed Rs.6,000/- as notional income in the year 2007-2008 and this might be taken double in this case as the accident took place in the year 2019. Therefore, the notional income might be taken as Rs.12,000/-. Further, the Tribunal has awarded loss of consortium of Rs.40,000/- as a whole to the petitioners. It is settled principle that loss of consortium and loss of love and affection are one and the same and so, the petitioners 2 to 4 being children of the deceased are entitled to Rs.40,000/- each. Therefore, the compensation award may be enhanced.

11. The respondents counsel though argued that the petitioners have not placed any material to prove the income of the deceased as Rs.30,000/- p.m, the counsel has not raised any strong objection to fix the notional income as Rs.12,000/- p.m for the deceased and also for Rs.40,000/- each towards loss of love and affection to the petitioners 2 to 4.

12. On hearing both and on perusal of records, it is clear that both side agreed the notional income as Rs.12,000/-. The Division Bench of



this Court has also held in **2019 (1) TNMAC 54** that the notional income of the deceased has to be fixed after applying inflation index. The petitioners state that the deceased was running a travel business, and the same was not strongly disputed by the respondents. Therefore, considering the above, there would be nothing wrong in fixing the notional income of the deceased as Rs.12,000/-. Both side have not raised any question with regard to 1/4th deduction towards own expenses of the deceased and also 10% future prospects. Applying the same, the income of the deceased after deducting 1/4 is fixed at Rs.9,000/- (Rs.12,000/- - Rs.3,000/-) and after adding 10% of income, the income of deceased is fixed at Rs.9,900/-. considering the age of the deceased as 55, the multiplier 11 is correct as per **Sarala Verma** case. Therefore, the loss of income is arrived as $\text{Rs.9,900/-} \times 12 \times 11 = \text{Rs.13,06,800/-}$.

13. While considering the loss of consortium and loss of love and affection, the Tribunal has only awarded Rs.40,000/-. 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 entitled to Rs.40,000/-. Therefore, the petitioners 2 to 4 are also entitled to Rs.40,000/- each towards loss of love and affection.



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14. It is not disputed by both side in respect of sum of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses as per dictum laid down by the **Hon'ble Supreme Court in Pranay Sethi case (2017 (2) TNMAC 609 (SC))**.

15. Thus, this Court holds that the total compensation payable to the appellants/claimants in MCOP.No.359 of 2019 as follows:

Sl. No.	Description	Amount awarded by the Tribunal
1.	Loss of income (Rs.9,900 x 12 x 11)	Rs.13,06,800/-
2.	Towards funeral expenses	Rs. 15,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Loss of consortium to the 1 st petitioner, being husband of the deceased	Rs. 40,000/-
5.	Loss of love and affection for petitioners 2 to 4 (Rs.40,000/- x 3) being son and daughters of the deceased	Rs. 1,20,000/-
	Total	Rs.14,96,800/-

Therefore, the petitioners 1 to 4/claimants in M.C.O.P.NO.359 of 2019 are entitled to Rs.14,96,800/-. Therefore, to that extent, the compensation awarded by the Tribunal is enhanced and fixed as Rs.14,96,800/-.



16. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.7,23,400/- to Rs.14,96,800/- (Rupees Fourteen Lakhs Ninety Six Thousand Eight Hundred only).

(iii)The second respondent /Insurance Company is directed to deposit the enhanced compensation amount of Rs.14,96,800/- (Rupees Fourteen Lakhs Ninety Six Thousand Eight 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.359 of 2019 on the file of the III Additional District Judge, Tirunelveli, within a period of six weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first appellant/Husband of the deceased is entitled to receive a sum of Rs.5,96,800/- and the 2 to 4 appellants/son and daughters of the deceased are entitled to receive a sum of Rs.3,00,000/- each with proportionate interests and costs less the amount already withdrawn if any.



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(v)The appellants are permitted to withdraw the entire award amount less the amount already withdrawn if any, by filing appropriate application before the Tribunal.

02.08.2023

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

- 1.The III Additional District 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.571 of 2023

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