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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)NO.263 OF 2021

1.Saraswathi

2.Ahila Sivagami

3.Gandhimathi

4.Anbumathi :Appellants/Petitioners

.VS.

1.Jaleel
Proprietor,
M/s.Best Trading Company,
Edamuttam Post,
Thirssur.

(R1 remained exparte before the Trial Court. Hence
notice dispensed with)

2.The National Insurance Company Limited,
through its Branch Manager,
Number Arcade,
M.G.Road,
Thirssur,
Kerala State.

3.The Tamil nadu Transport Corporation Limited,
through its Managing Director,
No.2, Trivandrum Road,
Vannarapettai,
Tirunelveli. : Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act against the judgment and decree made in



M.C.O.P.No.1091 of 2015, dated 30.11.2017, on the file of the Motor Accidents Claims Tribunal(Special Sub-Court), Tirunelveli.

For Appellants :Mr.T.S.Selvakumaran
For Respondent-1 :Notice dispensed with
For Respondent-2 :Mr.N.S.Ramakrishna Dass
For Respondent-3 :Mr.R.Rajamohan

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellants/Claimants for enhancement of the award amount passed in M.c.O.P.No. 1091 of 2015, dated 30.11.2017, on the file of the Motor Accidents Claims Tribunal(Special Sub-Court), Tirunelveli.

2.The appellants/claimants filed the above M.C.O.P alleging that on 12.06.2015 at about 10.15 p.m, the deceased was travelling in a bus bearing Registration No. TN 74 N 1552 belong to the third respondent from Tirunelveli to Pavorchatram. When the bus was crossing Veni Puncture Shop in Tenkasi-Tirunelveli Main Road, the lorry bearing Registration NO. KL 08 AA4164 belong to the first respondent came from the opposite direction in a rash and negligent manner entered into the right side of the road and hit against the bus. As a result, the deceased Vellapandian suffered extensive injuries and died of injuries. He was working as a Senior Sales



Supervisor in Vasanth and Co., and drawing a sum of Rs.12,000/- p.m as salary. He used to get incentives at Rs.7500/-p.m. He was a State Orator in Indian National Congress Party and got Rs.5000/- p.m by attending meetings. Thus he was earning a sum of Rs. 25,000/-p.m and spent the same for the welfare of the family. After his death, the claimants, wife and children of the deceased find it very difficult to lead their normal life. Thus claiming a sum of Rs. 40 lakhs, the claim petition is filed.

3.The second respondent did not dispute the accident and liability, but the quantum of compensation awarded by the Tribunal is just and proper and does not require enhancement. The same position was taken by the third respondent.

4.On considering the oral and documentary evidence the learned Tribunal awarded compensation as follows:

1.For loss of income	- Rs.8,10,000/-
2.For loss of consortium to the first appellant/ wife	-Rs. 40,000/-
3.For funeral expenses	-Rs. 15,000/-
4.For loss of estate	- Rs. 15,000/-

total	- Rs.8,80,000/-

5.It is the submission of the learned counsel for the appellants



that the Tribunal found that the deceased was working in Vansanth and Co and fixing the monthly income at Rs.10,000/-p.m., is less when compared to his age and experience.

6.In response, the learned counsel for the second respondent submitted that the claimants filed Ex.B4-Wage Slip to show that the deceased was working in Vasanth and Co and earning a sum of Rs. 12,500/-p.m as salary and Rs.7500/- as incentive. However, the wage slip was rejected by the Tribunal, as not proved by examining the concerned witness. Therefore, in the absence of any acceptable evidence, there is no need to enhance the award amount.

7.From the evidence produced, it is seen that ExB4 Series(three numbers)-wage slips has been produced by the claimants to show that the deceased was working in Vasanth and Co. These documents were rejected by the Tribunal for the reason that it was issued by Vasanth and Co, T.Nagar Branch and not by Vasanth and Co, Palayamkottai Branch and that no one associated with Vasanth and Co was examined to prove the wage slip. However, on the same breadth, the Tribunal also found on the basis of the evidence of P.W.1, that the deceased was working in Vasanth and Co for more than 20 years and because of his experience, he



was promoted as Manager. When salary certificate is rejected, it is not known as to why the Tribunal came to the conclusion that the deceased was working in Vasanth and Co for more than 20 years and he was promoted as Manager.

8. Be that as it may, the deceased was aged 59 years at the time of his death. By normal standard, he would have earned not less than Rs.450/- per day by doing any kind of work including Coolie work. He would have got employment for 25 days in a month and he would have easily earned a sum of Rs.11,250/- per month as monthly income. Therefore this Court can safely conclude that the deceased would have earned not less than Rs.11,250/-pm as monthly income. The Tribunal had not given any kind of consideration for the future prospects. Even for persons working in unorganized sector, future prospects has to be considered. Therefore relying on the judgment in the case of **Smt.Sarla Verma .vs. Delhi Transport Corporation and another reported in 2009(2) TN MAC 1(SC)** 10% of Rs.11,250/- is added towards future prospects. Therefore the monthly income of the deceased together with future prospects comes to Rs.12,375/-(Rs.11,250/- + Rs.1125 =12,375/-). Out of this amount, 1/4th amount has to be deducted towards the personal income of the deceased. 1/4th of the



above said amount comes to Rs.3093.75/- rounded off to Rs. 3094/-.Then Rs.3094x3/4 comes to Rs.9281/-.The loss of income per month is arrived at Rs.9281/-.The deceased was aged 59 years and the multiplier to be adopted is "9". Thus the loss of income is, Rs.9281/- x 12 x 9 =10,02,348/-.

9. Another submission of the learned counsel for the appellants is that no compensation was awarded to the claimants 2 to 4 towards loss of filial consortium. This Court also finds from the award that only the first claimant/wife was awarded a sum of Rs. 40,000/- towards loss of consortium. He pressed into service the judgment of the Honourable Supreme Court in ***Magma General Insurance Company Limited .vs. Nanu Ram @ Chuhru Ram reported in 2018(2) TN MAC 452(SC)***, for the proposition that the dependants are entitled for consortium individually at Rs. 40,000/-. Therefore the claimants/appellants 2 to 4 are also awarded a sum of Rs.40,000/- each for loss of filial consortium totalling to Rs.1,20,000/-. The award under other heads ie., for funeral expenses at Rs.15,000/- and for loss of estate at Rs. 15,000/- stands confirmed. Thus the award of the Tribunal is modified as follows:



S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of income	Rs. 8,10,000/-	Rs. 10,02,348/-	enhanced
2	Spousal consortium to the first appellant/wife	Rs.40,000/-	Rs.40,000/-	same
3	For loss of estate	Rs.15,000/-	Rs.15,000/-	same
4	For funeral expenses	Rs.15,000/-	Rs.15,000/-	Same
5.	For loss of filial consortium to the appellants 2 to 4	-----	Rs. 1,20,000/- Rs.40,000/- (each)	Newly awarded
6	Total	Rs. 8,80,000/-	Rs. 11,92,348/-	Enhanced

9. In fine, the Civil Miscellaneous Appeal is allowed in part and the award amount is enhanced from Rs.8,80,000/- to Rs. 11,92,348/- with interest at 7.5% p.a from the date of claim petition till the date of realisation. The second respondent/Insurance Company is directed to deposit the above said enhanced award amount with accrued interest and costs, less the award amount already deposited, if any, 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. 5,92,348/- and the claimants 2 to 4 are each entitled to a sum of Rs.2 lakhs each with proportionate accrued interest and costs and they are permitted to withdraw the above said amount, less the



award amount if any already withdrawn, by filing necessary application before the Tribunal. Registry is directed to draft the decree in this appeal only after payment of excess court fee, if any, towards the enhanced award amount, before the Registry. No costs.

03.11.2023

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

To

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



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G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
C.M.A(MD)No.263 of 2021**

03.11.2023