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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)Nos.2 and 3 of 2021

C.M.A(MD)No.2 of 2021

1.Selvi,

2.Minor S.S.Dhivan :Appellants/Petitioners

(Minor Second appellant represented by his mother, natural guardian and the first appellant herein Selvi)

/vs/

1.E.Nandhini

2.The Branch Manager,
Future General India Insurance Company Limited,
Office of Code -43, Sriram Centre,
Third Floor, D.No.`80,P.P.Chavadi,
Theni Main Road,
Madurai – 625 016.

3.N.Kanagasabapathy

4.K.Jeyanthi :Respondents/Respondents

C.M.A(MD)No.3 of 2021

V.Tamilselvan :Appellant/Petitioner

/vs/

1.E.Nandhini



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2. The Branch Manager,
Future General India Insurance Company Limited,
Office of Code -43, Sriram Centre,
Third Floor, D.No. 80, P.P. Chavadi,
Theni Main Road,
Madurai – 625 016. : Respondents/Respondents

PRAYER in C.M.A(MD)No.2 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the fair order and decretal order made in M.C.O.P.No.189 of 2017, dated 28.2.2020, on the file of the Motor Accident Claims Tribunal/IVth Additional District Judge, Madurai, for enhancement of compensation.

PRAYER in C.M.A(MD)No.3 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the fair order and decretal order made in M.C.O.P.No.748 of 2017, dated 28.2.2020, on the file of the Motor Accident Claims Tribunal/IVth Additional District Judge, Madurai, for enhancement of compensation.

C.M.A(MD)No.2 of 2021:

For Appellants	: Mr.K.Kumaravel
For Respondent-1	: Set exparte
For Respondent-2	: Mr.S.Srinivasa Raghavan
For Respondent-3	: No appearance
For Respondent-4	: Mr.M.Sridharan



C.M.A(MD)No.3 of 2021:

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For Appellant :Mr.K.Kumaravel
For Respondent-1 :Set exparte
For Respondent-2 :Mr.S.Srinivasa Raghavan

COMMON JUDGMENT

C.M.A(MD)No.2 of 2021 is filed seeking enhancement of compensation by the legal heirs of the deceased K.Selvakumar, whereas, C.M.A(MD)No.3 of 2021 is filed seeking enhancement of the compensation by the injured claimant who sustained injuries in the same accident.

2.The parties are referred to herin as per their ranking before the Tribunal.

3.M.C.O.P.No.189 of 2017 has been filed claiming compensation on account of the death of the deceased husband of the first Petitioner, father of the second petitioner and respondents 3 and 4 are the parents of the deceased. The deceased Selvakumar is aged 29 years at the time of accident. On 5.9.2016, at about 21.15 hours, the deceased was riding his motor-cycle bearing Registration No. TN 59 B V 8776 with one Tamil Selvan, appellant



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in C.M.A(MD)No.3 of 2017, as pillion rider, on Melur-Trichy Main Road from north to south keeping left side of the road. At that time, the first respondent's driver drew the car bearing Registration No.TN 38 BT 6458 from the opposite direction in the wrong side and in a rash and negligent manner and dashed against the two-wheeler on the eastern side of the road. As a result, the deceased succumbed to injuries and the Petitioner in M.C.O.P.No. 748 of 2017, who was travelling as a pillion rider, sustained injuries. The deceased was earning more than Rs.30,000/-p.m and hence the wife and minor child claim compensation. Similarly the injured filed a separate claim petition claiming compensation for the injuries sustained by him.

4.Both the claim petitions were tried together and disposed of by a common order.

6.Before the Tribunal, on the side of the Petitioners, P.W.1 to P.W.7 were examined and Ex.P1 to Ex.P40 were marked. On the side of the respondents, no witness was examined and no documents were marked. Ex.C1 and Ex.C2 were marked.

7.The Tribunal, after considering the evidence adduced on



side of the Petitioners, has found that only the driver of the offending vehicle drove the vehicle in a rash and negligence manner and fastended the liability on them. The Tribunal has fixed the notional income of the deceased at Rs.10,000/-p.m and added future prospects and awarded compensation of Rs.25,56,780/- as follows:

1.for loss of income	- Rs.21,42,000/-
2.for loss of estate	- Rs.15,000/-
3.for funeral expenses	- Rs.15,000/-
4.for loss of consortium-	Rs.40,000/-
to the first Petitioner	
5.for medical expenses	-Rs.3,44,780/-

total	-Rs.25,56,780/-

8.In the case of injured Tamilselvan in C.M.A(MD)No.3 of 2021, the Tribunal, after analyzing the evidence on record, awarded the compensation as follows:

1.for medical expenses	- Rs.3,54,737/-
2.for partital disability	- Rs.1,28,000/-
3.for loss of earning	- Rs.1,20,000/-
4.for pain and sufferings	- Rs.20,000/-
5.for transport to the	- Rs.10,000/-
hospital	
6.for extra nourishment	- Rs.10,000/-
7.for loss of amenities	- Rs.30,000/-

total	- Rs.6.72.737/-

Not satisfied with the above said award amounts, the



appellant/s/claimants have filed these two appeals.

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C.M.A(MD)No.2 of 2021:

9.The learned counsel for the appellants would submit that the Tribunal has fixed the notional income of the deceased at Rs. 10,000/-p.m and according to them, the deceased was owning a transport vehicle and was earning a sum of Rs.45,000/-p.m at the relevant point of time. The accident took place in the year 2016 and even if Minimum Wages Act is applied, he would have at least earn a sum of Rs.12,000/-p.m and hence prayed for enhancement of compensation.

10.The learned counsel for the second respondent would submit that the Tribunal has rightly appreciated the evidence of the parties and fixed the compensation. Hence opposed the appeal for enhancement of compensation.

11.In the light of the above facts, now the point that arose for consideration is as follows:

1.Whether the notional income fixed by the Tribunal is



proper or require to be enhanced?

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12.The evidence of the Petitioners would clearly shows that the deceased was aged 29 years at the time of accident and was earning a considerable sum through his transport vehicle and after the accident, it appears to have sold the transport vehicle. Even though there is no definite income established on the side of the Petitioners, the fact remains that the deceased was earning a considerable sum and owning a passenger van at the relevant point of time. This Court is of the view that even if Minimum Wages Act is applied, at the relevant point of time, the deceased would have earned at least more than Rs.10,000/-p.m. Accordingly, this Court fixed the notional income of the deceased at Rs.12,000/-p.m and if 40% is added towards future prospects, the monthly income comes to Rs.16,800/- and if 1/4th is deducted towards personal expenses of the deceased, the monthly income comes to Rs.12,600/-p.m and if multiplier of '17' is applied for the age group of the deceased, the total loss of dependency comes to Rs.12,600/- x 17 x 12 = Rs.25,70,400/-.Further, the Tribunal has not awarded any amount towards loss of love and affection and hence, this Court awards a sum of Rs.40,000/- each to the second Petitioner and respondents 3 and 4, totalling to Rs.1,20,000/-. Further, the award



of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses and Rs.40,000/- towards loss of consortium to the first Petitioner and Rs.3,44,780/- towards medical expenses stand confirmed and thus the compensation is arrived as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of income	Rs. 21,42,000/-	Rs. 25,70,400/-	enhanced
2	For loss of consortium to the first Petitioner/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 love and affection to the second Petitioner and respondents 3 and 4	----	Rs. 1,20,000/- (Rs.40,000/- each)	Newly awarded
6	For medical expenses	Rs. 3,44,780/-	Rs. 3,44,780/-	Same
7	Total	Rs. 25,56,780/-	Rs. 31,05,180/-	enhanced

Thus the total compensation payable to the Petitioners is Rs. 31,05,180/-/- rounded off to Rs.31,05,000/- with interest at the rate of 7.5%p.a from the date of claim petition till the date of realization.



C.M.A(MD)No.3 of 2021

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13.As far as this appeal is concerned, the Tribunal has awarded a sum of Rs.6,72,737/- as compensation. The disability suffered by the claimant is only partial permanent disability, besides he is running a tea stall. The nature of the injury sustained by the Petitioner is only fracture in the left leg and fracture is also cured. Further there is no proof for functional disability. The nature of the fracture and injury will not immobilize the Petitioner from doing any other work as before.

14.In such view of the matter, this Court is of the view that the amount awarded by the Tribunal does not require any interference, except the award under the head of pain and sufferings at Rs.20,000/- which seems to be low and the same is enhanced to Rs.50,000/- and thus, the compensation is arrived as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For partial disability	Rs. 1,28,000/-	Rs. 1,28,000/-	same
2	For loss of earning	Rs. 1,20,000/-	Rs. 1,20,000/-	same



3	For pain and sufferings	Rs.20,000/-	Rs.50,000/-	Enhanced by Rs. 30,000/-
4	For medical expenses	Rs. 3,54,737/-	Rs. 3,54,737/-	same
5.	For transport to hospital	Rs.10,000/-	Rs.10,000/-	same
6	For extra nourishment	Rs.10,000/-	Rs.10,000/-	Same
7	For loss of amenities	Rs.30,000/-	Rs.30,000/-	Same
8	Total	Rs. 6,72,737/-	Rs. 7,02,737/-	enhanced

Thus the total compensation payable to the Petitioner is Rs. 7,02,737/- rounded off to Rs.7,03,000/- with interest at the rate of 7.5%p.a from the date of claim petition till the date of realization.

C.M.A(MD)No.2 of 2021

12.In the result,the Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.25,56,780/- to Rs.31,05,000/- with interest at the rate of 7.5%p.a., from the date of claim petition till the date of realization. The second respondent-Insurance Company is directed to deposit the above said enhanced award amount with accrued interest and costs, less the award amount



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already deposited, if any, to the credit of claim petition before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, first Petitioner and respondents 3 and 4 are entitled to withdraw their share in the award amount, as per the ratio of apportionment made by the Tribunal, with proportionate accrued interest and costs, less the award amount, if any already withdrawn, by filing necessary application before the Tribunal. The share of the minor second Petitioner is directed to be deposited in any one of the nationalized bank in an interest bearing fixed deposit till the minor attains majority and the first petitioner/mother is permitted to withdraw the interest from the said deposit once in three months and utilize the same for the welfare of the child. The Petitioners 1 and 2/claimants and respondents 3 and 4 are directed to pay the excess court fee, if any, towards the enhanced award amount to the credit of Registry. Only on such payment being made, Registry is directed to draft the decree in the appeal. No costs.

C.M.A(MD)No.3 of 2021

12.In the result,the Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.6,72,737/- to Rs.7,03,000/-



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with interest at the rate of 7.5%p.a., from the date of claim petition till the date of realization. The second respondent Insurance Company is directed to deposit the above said modified enhanced award amount with accrued interest and costs, less the award amount already deposited, if any, to the credit of claim petition before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Petitioner claimant is permitted to withdraw the award amount with accrued interest and costs, less the award amount, if any already withdrawn, by filing necessary application before the Tribunal. No costs.

02.06.2023

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

To

- 1.The Motor Accidents Claims Tribunal,
(IVth Additional District Judge),
Madurai.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR.,J.

vsn

COMMON JUDGMENT MADE IN
C.M.A(MD)Nos.2 and
3 of 2021

02.06.2023