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1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.12.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)NO.1187 OF 2023

Ponnuchamy(died)

1.P.Ponkarthick

2.P.Naveen

3.P.Sindhuja :Appellants/Petitioners

.VS.

1.P.Ganesan

2.The Manager,
Oriental Insurance Company,
First Floor, K.J.R.Complex,
Kamala Thoppu Street,
East Veli Street,
Madurai.

3.The Director,
Tamil Nadu State Transport Corporation,
By-pass Road,
Madurai – 600 016. : Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award made in M.C.O.P.No.462 of 2016, dated 02.03.2019, on the file of the District and Sessions Communal Clash, Madurai and to set aside the same.



For Appellants :Mr.M.Arjun Varman
for M/s.Lajapathi Roy and Associates
For Respondent-2 :Mr.A.Ilango

JUDGMENT

Challenging the quantum of compensation awarded, this Civil Miscellaneous Appeal is filed.

2.On 07.10.2015 at about 1.05 p.m, the deceased Radhika returned from the vegetable market after completing her vegetable vending business. When she was travelling in a share auto bearing Registration NO. TN 59 AM 3884, the auto driver was trying to overtake the vehicle going in-front of his vehicle and in that process, he dashed against the bus bearing Registration No. TN 58 N 1751 belonging to the third respondent, which was coming from the opposite direction. As a result, the deceased Radhika sustained injuries and despite treatment,she succumbed to injuries. The appellants/Petitioners are her husband and children. They filed a claim petition seeking compensation of Rs.20 lakhs.

3.The Insurance Company resisted the claim stating that the accident had happened because of the negligent driving on the part of the bus driver. The compensation awarded is also excessive.



4. During enquiry before the Tribunal, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.14 were marked. R.W.1 to R.W.4 were examined and Ex.R.1 to Ex.R.3 were marked. That apart, Ex.X1 and Ex.X2 were marked.

5. On the basis of the oral and documentary evidence produced, the learned Tribunal awarded a compensation of Rs. 11,08,800/-. In the said award amount, the second respondent was ordered to pay 80% and the third respondent was ordered to pay 20% of the total compensation. The award of the Tribunal is as follows:

1. For loss of income	- Rs.10,23,792/-
2. For funeral expenses	- Rs.10,000/-
3. For loss of consortium to the first claimant	- Rs.25,000/-
4. For loss of love and affection (Rs.10,000/- x 4)	- Rs.40,000/-
5. For transportation	- Rs.10,000/-

total	- Rs.11,08,792/-

Rounded off to Rs.11,08,800/-

6. It is the submission of the learned counsel for the appellants that the deceased was a vegetable vendor and she would have earned not less than Rs.500/- per day, as wages. However, the learned Tribunal had adopted a notional income of Rs.6,500/- for



arriving at the compensation. Fixing a sum of Rs.6,500/- as notional income is too low. He submitted a judgment of this Court in C.M.A.NO.3567 of 2019(Saritha and others /vs/ Siva and another) wherein, it is held that for a Mason, a notional income of Rs. 12,000/- was taken as the basis for fixing the compensation.

7.In response, the learned counsel for the second respondent submitted that Mason is a skilled person, whereas, the deceased was a vegetable vendor. In C.M.A.Nos.2600 to 2602 of 2021 and batch of cases, dated 20.08.2022, this Court adopted Rs.9,000/- as notional income for an agriculturist, who died in an accident.

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

9.Upon consideration of the materials produced, it is seen that the learned Tribunal relying on the judgment of the Honourable Supreme Court in ***Syed Sadiq .vs. United India Insurance Company Limited reported in 2014(1) TN MAC 459(SC)*** adopted notional income of Rs.6,500/-. In that case, the accident had happened in the year 2008. In the case before hand, the accident had happened on 07.10.2015. The deceased by her



avocation as vegetable vendor, could have easily earned a sum of Rs.300/- per day. In that case, she would have earned not less than Rs.9,000/-per month. In this view of the matter, this Court is of the view that Rs.9,000/- could be fixed as notional income per month for the deceased to ascertain the compensation. As per **Smt.Sarla Verma .vs.Delhi Transport Corporation and another reported in 2009(2) TN MAC 1(SC)**, 25% of this amount ie.,Rs.2,250/- has to be added towards future prospects. Therefore the monthly notional income is Rs.11,250/-. If ¼th of the amount(ie.,Rs. 2,813/-) is deducted towards the personal expenditure of the deceased, the monthly notional income is Rs.8,437/-. Proper multiplier for the age group of the deceased is '14'.Thus the total compensation to be fixed for the death of the deceased and loss of income is Rs.14,17,416/-(Rs.8,437/- x 12 x 14).

10.It is seen that the Tribunal awarded a sum of Rs.25,000/- as loss of consortium to the first claimant/husband. As per **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram reported in 2018 (2) TNMAC 452 (SC)**, the claimants 1 to 4 are entitled to Rs.40,000/- each totalling to Rs.1,60,000/- The other awards under the head of loss of love and affection at Rs.40,000/- (Rs.10,000/- x4) and for funeral expenses at Rs.10,000/- and for



transportation at Rs.10,000/- stands 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. 10,23,792/- -	Rs. 14,17,416/- -	enhanced
2	For funeral expenses	Rs.10,000/-	Rs.10,000/-	same
3	For loss of love and affection	Rs.40,000/- (Rs. 10,000x4)	Rs.40,000/-	same
4	For transportation	Rs.10,000/-	Rs.10,000/-	Same
5	For loss of consortium to the first claimant/husband	Rs.25,000/-	Rs.40,000/-	enhanced
6	For loss of filial consortium to the claimants 2 to 4	-----	Rs. 1,20,000/- (Rs.40,000/- x 3)	Not awarded
7	Total	Rs. 11,08,792/- (rounded off to Rs. 10,08,800/-)	Rs. 16,37,416/-	enhanced

Rounded off to Rs.16,37,500/- with interest at the rate of 7.5% p.a from the date of claim petition till the date of realization.



11. In the result, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs. 11,08,800/- is enhanced to Rs.16,37,500/- with interest at the rate of 7.5% p.a from the date of claim petition till the date of realization. Out of the said enhanced award amount, second respondent is directed to pay 80% of the award amount ie., a sum of Rs.13,10,000/- and the third respondent is directed to pay 20% of the award amount ie., a sum of Rs.3,27,500/- together with proportionate accrued interest and costs to the credit of claim petition before the Tribunal, less the award amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants 1 to 3/appellants 1 to 3 each are entitled to a sum of Rs. 5,45,83.33/- with proportionate accrued interest and costs and they are permitted to withdraw the above said amount by filing necessary application before the Tribunal. The appellants 2 to 4/claimants 2 to 4 are directed to deposit the excess Court fee, if any, towards the enhanced award amount before the Registry. Only on such payment being made, Registry is directed to draft the decree in this appeal. No costs.

06.12.2023



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

To

- 1.The District and Sessions Communal Clashes Court,
Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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9

G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
C.M.A(MD)No.1187 of 2023**

06.12.2023