



C.M.A(MD)No.75 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :10.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A.(MD)No.75 of 2021

- 1.Violet Jeya Kumari
- 2.Veerammakutti Vinitha
- 3.Minor.Veeralakshmi

(Minor 3rd appellant through her mother
and next guardian 1st appellant herein)

... Appellants/Petitioners

Vs.

- 1.Manuel

- 2.The Oriental Insurance Company Ltd.,
Through its Divisional Manager,
No.24/E/12A, Sivasakthi Shopping Complex,
S.N.High Road,
Tirunelveli,
(R1 called ex-parte before the trial Court
Hence notice dispense with)

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.528 of 2015 on the file of the Motor Accident Claims Tribunal Authority(Special Sub-Judge), Tirunelveli, dated 25.7.2019.

For Appellants
For R-2

:Mr.T.Selvakumaran
:Mr.C.Jawahar Ravindran



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This Civil Miscellaneous Appeal is filed by the claimants challenging the quantum of award passed in M.C.O.P.No.528 of 2015 on the file of the Motor Accident Claims Tribunal Authority(Special Sub-Judge), Tirunelveli, dated 25.7.2019.

2. The appellants/petitioners filed in M.C.O.P.No.528 of 2015 seeking compensation of Rs.50,00,000/- for the death of the first appellant's husband and father of appellant's 2 & 3 by name Subramanian. It is alleged in the petition that on 18.10.2014, at about 12.30 noon, when the deceased was travelling in a motor-cycle bearing Registration No.TN-72-BA-0549 from Tirunelveli Junction to Palayamkottai, near Thangamayil Jewellery shop at Palayamkottai, a Maruti Car bearing Registration No.TN-72-C-4647, came in a rash and negligent manner and dashed against the motor-cycle. As a result, the deceased Subramanian sustained head injuries and later died. The deceased was running a Tea Stall in the name and style of Devi Tea Stall and was earning a sum of Rs.30,000/- per month. The appellants are depending on the income of the deceased. After his death, they are left with no-one to take care of them and they find it very difficult to make both ends meet. In the said circumstances, the appellants filed the claim petition seeking compensation.



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3. The second respondent filed counter opposing the claim of the petitioners. It is alleged that rider of the two-wheeler was responsible for the accident and the quantum of compensation claimed was also excessive.

4. During the course of enquiry, P.Ws.1 to 3 were examined and Exs.P1 to 12 were marked. There was no oral or documentary evidence produced on the side of the Insurance Company.

5. The Tribunal on considering the oral and documentary evidence, arrived at a total compensation of Rs.12,40,000/-.

6. Being not satisfied with the award amount, the claimants filed this Civil Miscellaneous Appeal seeking for enhancement of compensation.

7. It is submitted by the learned counsel for the appellants that the appellants produced documents in the form of Bank Passbook, professional tax receipts, Insurance Policy Premium Receipts and sale deed in the name of the deceased to show that the deceased was earning handsome monthly income. However, without considering these materials, the Tribunal has fixed the monthly income of the deceased at



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Rs.9,000/- without any basis. He prayed that the judgment of this Court in ***Andal and others vs. Avinav Kannan and others*** reported in **2019 (1) TN MAC 54(DB)**, may be followed for fixing the monthly income of the deceased.

8. In reply, the learned counsel for the second respondent/Insurance Company submitted that the quantum was fixed, taking into consideration all the relevant particulars, especially, the oral and documentary evidence produced by the appellants. There was no evidence produced to show that the deceased was earning a sum of Rs.30,000/- per month. In the said circumstances, fixation of monthly income of the deceased at Rs.9,000/- is just and appropriate. He fairly conceded the liability of the Insurance Company in paying the compensation amount to the claimants.

9. This Court considered the rival submissions and perused the records.

10. The only point arises for consideration in this appeal is,

“Whether the quantum of compensation awarded to the appellants/claimants is just and appropriate, especially, the monthly income fixed by the Tribunal for arriving at loss of dependency is correct or not?”



The Notional income fixed by the Hon'ble Supreme Court of India for the vegetable vendor ie., Rs.6,500 during the year 2007-2008 X *Cost of Inflation index for the year 2013-2014*

12. Following this formula, in this case, if we calculate the monthly income of the deceased, the calculation runs as follows:



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6500 X 240

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= Rs.12,093/-

129

The deceased was aged 47 years at the time of accident. In the light of the decision in **Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC)**, 25% of Rs.12,093/- to be added towards future prospects. 25% of this amount comes to Rs.3,023/- and thus, monthly income of the deceased comes to Rs.15,116/- (12093 + 3023). Deceased is survived by three dependants. Therefore, 1/3rd of this amount has to be deducted towards personal expenses. 1/3rd of this amount comes to Rs.5,039/- and 2/3rd amount is Rs.10,077/-. Thus, monthly income of the deceased is fixed at Rs.10,077/-. Proper multiplier for fixing the loss of dependency is “13”. When calculated, it comes to Rs.15,72,012/- (10077 X 12 X 13). The loss of dependency comes to Rs.15,72,012/-. Thus, this Court enhances the loss of dependency from Rs.11,70,000/- to Rs.15,72,012/-.

13. The learned counsel for the appellants also submitted that loss of consortium was awarded to the first appellant alone and not awarded to appellants 2 and 3 and therefore, loss of consortium has to be awarded to appellants 2 and 3.



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14. The judgment reported in ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in **217(2) TN MAC 609 (SC)**, the Hon'ble Supreme Court held that the claimants are entitled for consortium under “Spousal Consortium, Parental Consortium and Filial Consortium”. In this case, only spousal consortium to the first appellant was given at Rs.40,000/-. No amount was awarded under the head “loss of consortium” to appellants 2 and 3. They are also entitled for loss of consortium at Rs.40,000/- each. The compensation awarded under heads of loss of estate and funeral expenses are retained and not disturbed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of dependency	11,70,000	15,72,012	Enhanced
2.	For consortium	40,000 (to 1 st claimant)	1,20,000 (Rs.40,000/- each to all the claimants)	enhanced
3.	For loss of estate	15,000	15,000	confirmed
4.	For funeral expenses	15,000	15,000	confirmed
	Total	Rs.12,40,000	Rs.17,22,012	By enhancing a sum of Rs.4,82,012/-



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To,

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



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G.CHANDRASEKHARAN, J.

pm

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