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C.M.A.No.706 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

**C.M.A.No.706 of 2024**

1.Alamelu

2.K.Yogeswari Minor

3.K.Murali Minor

4.E.Kamala

[\*\* Minors appellants 2 and 3 are rep by their mother/1<sup>st</sup> appellant]

...Appellant

Vs

1.P.Raman

2.National Insurance Company Limited,  
Regina Mansion, No.46, Moore Street,  
Chennai 600 001.

... Respondents

**Prayer:**

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award against the judgment and decree dated 23.09.2021 made in MACTOP.No.3343 of 2017 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Ms.A.Subadra

For Respondent : Ms.R.Rathna Thara, for R2



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## **JUDGMENT**

This civil miscellaneous appeal has been filed challenging the judgment and decree dated 23.09.2021 made in MACTOP.No.3343 of 2017.

2. The learned counsel for the claimant would submit that on 10.04.2017, when the deceased was driving a car bearing Registration No.TN-20-CJ-9650 towards Chennai, the said car was dashed against a stationed Lorry bearing Registration No.TN-88-A-4470 due to tyre burst, due to which he was died on the spot. Considering all the aspects, the Tribunal had awarded the compensation in the following manner:

| <b><i>S.No</i></b> | <b><i>Heads</i></b>        | <b><i>Compensation (Rs.)</i></b> |
|--------------------|----------------------------|----------------------------------|
| 1                  | Loss of Dependency         | 20,32,538                        |
| 2                  | Loss of Estate             | 15,000                           |
| 3                  | Loss of Love and Affection | 40,000                           |
| 4                  | Funeral Expenses           | 15,000                           |
|                    | Total                      | 21,02,538                        |
|                    | Rounded off to             | 21,02,600                        |

3. He would further submit that the Tribunal had rightly applied the cost inflation index as per the law laid down by the Hon'ble Apex Court. However, while awarding compensation, the Tribunal had wrongly taken the cost inflation



index for the year 2008 as 137 instead of 129. Hence, he requests this Court to re-determine the same. Further, she would request this Court to re-determine the compensation awarded under the heads Loss of Love and Affection and Loss of Consortium.

4. Ms.R.Rathna Thara, learned counsel takes notice on behalf of the 2<sup>nd</sup> respondent and would submit that as per the law laid down by the Hon'ble Apex Court, the claimants are entitled for the Loss of Consortium and Loss of Love and Affection and hence, the same may be awarded. As far as cost inflation is concerned, she would fairly accepted that the Tribunal had wrongly applied the same. Hence, she requests this Court to re-determine the same.

5. Heard the learned counsel for the appellant and the respondents and also perused the documents available on records.

6. In the present case, there is no dispute with regard to the occurrence of accident and fastening of liability. The only issue is with regard to the quantum of compensation awarded by the Tribunal, particularly on the aspect of



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application of cost inflation index and failure of Tribunal to award compensation towards the loss of Consortium and Loss of Love and affection for the claimants.

7. As per the law laid down by the Hon'ble Apex Court in ***Syed Sadiq and others vs. Divisional Manager, United India*** reported in ***MANU/SC/0033/2014***, cost inflation index for the first half of the year 2008 is 129 and for the 2<sup>nd</sup> half of the year 2008 is 137. However, the Tribunal has taken 137 instead of 129 while calculating the notional income of the deceased. Other than the said error, all other calculations are just and fair. Hence, the notional income of the deceased would be calculated as follows:

$$\text{Rs.6,500/-} * 272/129 = \text{Rs.13,705/-}$$

8. Therefore, by applying 14 as multiplier, adding 25% towards future prospects and deducting 1/4<sup>th</sup> towards personal expenses of the deceased, the loss of income would be calculated as follows:

$$\begin{aligned} &\text{Rs.13,705/- (notional income) + Rs.3,426/- (25\% future prospects)} \\ &* 12 \text{ (months)} * 14 \text{ (multiplier)} * (3/4) \text{ (deduction towards personal expenses)} \\ &= \text{Rs.21,58,506/-} \end{aligned}$$

9. Further, it appears that only a sum of Rs.40,000/- was awarded



towards Loss Love and Affection, which is on the lower side. Hence, this Court is inclined to award a sum of Rs.40,000/- towards Loss of Consortium for the 1<sup>st</sup> appellant and a sum of Rs.1,20,000/- (Rs.40,000/- each) towards the Loss of Love and Affection for the appellants 2 to 4.

10. Accordingly, the compensation awarded by the Tribunal is modified as follows:

| <i>S.No.</i> | <i>Heads</i>               | <i>Compensation awarded by Tribunal (Rs.)</i> | <i>Compensation awarded by this Court (Rs.)</i> |
|--------------|----------------------------|-----------------------------------------------|-------------------------------------------------|
| 1            | Loss of Dependency         | 20,32,538                                     | 21,58,506                                       |
| 2            | Loss of Estate             | 15,000                                        | 15,000                                          |
| 3            | Loss of Love and Affection | 40,000                                        | 1,20,000                                        |
| 4            | Loss of Consortium         | Nil                                           | 40,000                                          |
| 5            | Funeral Expenses           | 15,000                                        | 15,000                                          |
|              | Total                      | 21,02,538                                     | 23,48,506                                       |
|              | Rounded off to             | 21,02,600                                     | 23,48,600                                       |

11. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.23,48,600/-. Accordingly, the award amount stands increased from a sum of Rs.21,02,600/- to Rs.23,48,600/-. In all other aspects, the award of the Tribunal stands confirmed. It is also made clear that the compensation will be



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awarded to the claimants in the following proportions:

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- i) Mother of the deceased/4<sup>th</sup> appellant – Rs.3,00,000/-
- ii) Minor Children of the deceased/appellants 2 & 3 – Rs.5,00,000/- each
- iii) Wife of the deceased/1<sup>st</sup> appellant – Rs.10,48,600/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the 2<sup>nd</sup> respondent is directed to deposit a sum of Rs.23,48,600/- along with interest and costs, less the amount already deposited and also less the interest for the waiver period, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of MACTOP.No.3343 of 2017 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. Upon such deposit, the share of the minor appellants 2 and 3 is directed to be deposited in any one of the Nationalised Bank till they attain majority and the 1<sup>st</sup> appellant being the mother of the minors is permitted to withdraw the accrued interest once in three months for the welfare of the minors. Further, the Tribunal is directed to transfer the share of the 1<sup>st</sup> and 4<sup>th</sup> appellants to their respective bank accounts, as per the proportion determined by this Court, by way of RTGS, within a period of three weeks from the deposit and receipt of the



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Bank details from the claimants. No costs.

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Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

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**KRISHNAN RAMASAMY,J.**

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