IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.12.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3355 of 2024

1.Kokila

2.Minor Dhakshini
Minor rep. by Next friend/guardian mother 1st petitioner Kokila

3.Amsa
4.Thangam ... Appellants

Vs.

1.R.Palanisamy

2.M/s.United India Insurance Co. Ltd.,
Having issuing Branch Office at
No.14/1-77B, Salem Main Road,
Puduchampalli Raman Nagar Post,
Mettur Dam, Salem District.

Having Regional Office at
No.1, TP Hub, No.104-A, Ranga Building,
Peramanur Main Road, Near Four Roads,
Peramanur, Salem – 636 007. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1422 of 2019 dated 01.10.2021 on the file of the Motor Accidents Claims Tribunal, MCOP Tribunal, Salem.

For Appellants : Mr.R.Navaneetha Krishnan

For Respondents : Mrs.R.Sreevidhya [R2]

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JUDGMENT

The claimants are before this Court seeking an enhancement of the award passed by the Sub Judge, MCOP Tribunal, Rasipuram in M.C.O.P.No.130 of 2018, dated 04.09.2019.

2. The appellants/claimants are the wife, minor daughter, mother and father of the deceased Sakthi. On 23.03.2019 at about 2.30 hours, when the deceased was travelling as a load man in the Bolero pick-up van bearing Regn.No.TN-52-S-4889 driven by its driver, the lorry bearing Regn.No.TN-28-AB-3913 belonging to the 1st respondent, which was insured with the 2nd respondent, driven by its driver in a rash and negligent manner, without following the traffic rules and the driver of the lorry applied sudden break without any signal and it has happened to the van to hit behind the lorry due to which, the deceased sustained grievous injuries and he was admitted in

Universal Hospital, Salem and shifted to KMCH Coimbatore and he died in the above hospital on the same day. Therefore, the claimants have filed a claim petition claiming compensation for a sum of Rs.50,00,000/- before the Tribunal in M.C.O.P.No.130 of 2018 for the death of the deceased.

3. Before the Tribunal, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.17 and Ex.X.1 have been marked on the side of the claimants. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal partly allowed the petition and awarded a sum of Rs.19,73,000/- as compensation to the claimants. Not satisfied with the same, the appellants have preferred the present appeal seeking enhancement.

4. Learned counsel appearing for the appellants submitted that the monthly income fixed by the Tribunal is on the lower side and the Tribunal has not added future prospects, which requires to be re-considered by this Court. That apart, the amount awarded under the head of loss of love and affection was also on the lower side and was not in consonance with the

judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay sethi and others reported in 2017 (16) Supreme Court Cases 680***. Accordingly, he prays for appropriate enhancement in favour of the appellants.

5. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, by considering all the oral and documentary evidence, the Tribunal has awarded just and reasonable compensation under various heads, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellants and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

7. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The only grievance of the claimant is with regard to the quantum of compensation awarded by the

Tribunal. To compute the income under the head loss of income, no document in support of proof of the income of the deceased has been filed. However, it is claimed by the appellants/claimants that, at the time of accident, the deceased was working as skilled load man and earned a sum of Rs.24,000/- per month. As per the decision of the Hon'ble Apex Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459,*** notional income of a vegetable vendor is fixed at Rs.6,500/-, where income of the deceased is not proved through documentary evidence. However, the Tribunal had fixed a sum of Rs.12,000/- as notional income, which is on the lower side since the accident had occurred in the year 2019 and the Tribunal has not added future aspects. Hence, by applying the ratio laid down by the Hon'ble Supreme Court in *Syed Sadiq's* case, fixing a notional income of Rs.15,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** the total income per month is quantified at Rs.21,000/-. Deducting $1/4^{th}$ towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.15,750/- per month and the deceased being aged about 25 years, as evidenced from the records, adopting the multiplier of 18 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income to the family is arrived at Rs.15,750/- * 12 * 18 = Rs.34,02,000/-, which is worked out as follows :-

Loss of Income	**Amount (in Rs.)**
Notional income (Per month)	15,000
Add: Future Prospects (Rs.15,000 x 40%) (Per month)	6,000
	21,000
Less: Personal expenses (1/4th) (Rs.21,000/- x 1/4th) (Per month)	5,250
	15,750
Notional income (per annum) (Rs.15,750/- x 12)	1,89,000
Multiplier	18
Total	**34,02,000**

8. Further, the Tribunal had awarded a sum of Rs.80,000/- towards loss of love and affection; Rs.25,000/- towards funeral expenses; Rs.40,000/- towards loss of consortium and Rs.1,00,000/- towards Medical

expenses. This Court finds that the compensation awarded under the heads funeral expenses, loss of consortium and Medical expenses are just and reasonable and the same does not require any interference. However, insofar as the compensation awarded towards loss of love and affection is concerned, this Court feels that the appellants 2 to 4 are entitled to a sum of Rs.40,000/- each. Since no compensation has been awarded towards loss of estate, this court awards a sum of Rs.15,000/- under this head.

9. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

S. No.	**Heads**	**Awarded by the Tribunal (Amount in Rs.)**	**Awarded by this Court (Amount in Rs.)**
1	Loss of income	**17,28,000/-**	**34,02,000/- (enhanced)**
2	Loss of love and affection (Rs.40,000/- x 3)	**80,000/-**	**1,20,000/- (enhanced)**
3	Funeral expenses	**25,000/-**	**15,000/- (reduced)**
4	Loss of estate	**-**	**15,000/-**
5	Loss of consortium	40,000/-	40,000/-
6	Medical expenses	1,00,000/-	1,00,000/-

S. No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
	Total	**19,73,000/-**	**36,92,000/-**

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.19,73,000/-** to **Rs.36,92,000/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.1422 of 2019 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. The above modified compensation amount shall be apportioned among the appellants as per the apportionment of the Tribunal. On such deposit being made, the Tribunal is directed to transfer the share of the appellants 1, 3 and 4, directly to the bank account of the appellants 1, 3 and 4 through RTGS within a period of two (2) weeks thereafter upon

production of proof with regard to payment of Court fee on the enhanced compensation by the appellants. The appellants/claimants are directed to pay necessary additional Court fee on the enhanced compensation amount. Further, the Tribunal is also directed to deposit the share of the 2nd appellant/2nd claimant in an interest yielding fixed deposit with any one of the Nationalised Banks, initially for a period of three years to be renewed at periodic intervals until she attains majority and interest derived from out of the said deposit shall be paid to the mother/Kokila of the 2nd appellant/2nd claimant every quarter to be utilised for the welfare of the said minor claimant. After attaining majority, it is open to the 2nd appellant/2nd claimant to file necessary application to establish the majority, at which point of time, the Tribunal is directed to transfer the amount in the fixed deposit directly to the bank account of the 2nd appellant/2nd claimant through RTGS within a period of two (2) weeks thereafter. It is made clear that the appellants will not entitled to any interest for the delay period. No costs.

20.12.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

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To

The Motor Accidents Claims Tribunal, Special District Judge, MCOP Tribunal, Salem.