



C.M.A.No.978 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.978 of 2020

1. Sarathkumar
2. Vijayakumar
3. Sumathi
4. Jothika
5. Rajarajeshwari
6. Minor Manjula Devi

(Minor appellant No.6 is represented by her next friend brother, the first appellant herein) ... Appellants

Vs.

1. Arunkumar
2. Padmavathy
3. The Branch Manager,
The National Insurance Company Ltd.,
No.40, Rastha Manaveli Street, No.2, Road,
Mayiladuthurai Town and district Munsif.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award dated 18.04.2018 in M.A.C.T.O.P.No.61 of 2017, on the file of the Motor Accident Claims Tribunal (District Court), Karaikal and consequently enhance the amount of compensation awarded to the appellant.



C.M.A.No.978 of 2020

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For Appellants : Mr.T.Saikrishnan

For Respondents : Mrs.R.Sreevidhya for R3
No appearance for R1 and
R2

JUDGMENT

Assailing the award passed in MACTOP.No.61 of 2017 vide judgment dated 18.04.2018 on the file of the Motor Accident Claims Tribunal (District Court), Karaikal, the present civil miscellaneous appeal has been filed by the appellant / claimant.

2. Though the notice was served on the respondents 1 and 2, no one appeared on their behalf. Considering the period of pendency of the appeal, the same is taken up for final hearing based on the materials available on record.

3. The brief facts necessary to dispose of the above appeals are as follows :-

(i) On 10.10.2016 at about 10.30 p.m when the mother of the claimants namely one Lalitha was standing near her house, at that time,



C.M.A.No.978 of 2020

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a bolero Jeep bearing registration No.TN 51 E 6741, belonging to the second respondent driven by the first respondent in a rash and negligent manner dashed the deceased Lalitha, due to which she sustained grievous injuries and succumbed to the same on the way to hospital. Thereafter, the claimants have filed the claim petition claiming a sum of Rs.25,00,000/- under various heads.

4. Before the Tribunal, the claimants examined P.W.1 and marked Exs.P1 to Ex.P.11. On the side of the respondents, no documents were marked and no witnesses have been examined. After trial, the Tribunal, on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place solely due to the rash and negligent driving of the 1st respondent / driver of the second respondent vehicle and awarded a sum of Rs.8,21,400/- towards compensation for the death of the deceased and held that the 2nd and 3rd respondents are jointly and severally liable to pay the above compensation. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have come up with this appeal seeking enhancement of compensation.



C.M.A.No.978 of 2020

WEB COPY

5. Learned counsel for the appellants submitted that the above said accident happened solely due to the rash and negligent driving of the 1st respondent and the accident is of the year 2016 and at the time of accident, the deceased was earning not less than Rs.400/- per day, however, the tribunal had taken the notional income of the deceased as Rs.6,000/-, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions and thereby, the same has to be interfered with. Further, the compensation awarded under other heads are also on the lower side and the same needs to be enhanced. Accordingly, he prayed for appropriate orders.

6. Per contra, the learned counsel appearing on behalf of the 3rd respondent-Insurance Company contended that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

7. This Court has carefully considered the submissions made by



C.M.A.No.978 of 2020

the learned counsel on either side and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties and the parties have not raised any issue on the aspect of negligence and therefore, this Court is not venturing into the same.

9. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2017. It is the claim of the appellants that the deceased was not earning less than Rs.12,000/- per month at the time of accident, however, the Tribunal has fixed the notional monthly income at Rs.6,000/-, which is on the lower side. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, and also considering the age of the deceased as also the claimants, fixing a notional income of Rs.12,000/- and adding future prospects at 10%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others*



C.M.A.No.978 of 2020

WEB COPY

reported in **2017 (16) Supreme Court Cases 680**, the income per month is quantified at Rs.13,200/- (12,000 + 1,200) and after deducting 1/4th towards personal expenses, the monthly income of the deceased would be at Rs.9,900/- (Rs.13,200 – 3,300) and as per the Judgment of the Hon'ble Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation* and another reported in 2009 (2) TN MAC 1 (SC), the right multiplier to be adopted is '11' and hence, the loss of income would be at Rs.13,06,800/- (Rs.9,900 x 12 x 11).

10. Insofar as the other heads are concerned, the Tribunal has awarded a sum of Rs.1,50,000/- under the head love and affection for the appellants, which is on the lower side and the same was also 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*. Hence, this Court grants a sum of Rs.40,000/- to each appellants in total a sum of Rs.2,40,000/- is granted under the said head. No amount has been awarded under the head “loss of estate”, hence a sum of Rs.15,000/- has



C.M.A.No.978 of 2020

been awarded under the said head. The other heads awarded by the Tribunal does not require any interference.

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

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of income	6,53,400/-	13,06,800/-
Love and affection	1,50,000/-	2,40,000/-
Funeral expenses	15,000/-	15,000/-
Loss of estate	-	15,000/- (awarded)
Transportation	3,000	3,000
Total	8,21,400/-	15,79,800/-

12. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.61 of 2017 is modified by enhancing the compensation amount from Rs.8,21,400/- to **Rs.15,79,800/-**. The third respondent Insurance company is directed to deposit the said amount to the credit of MCOP.No.61 of 2017 along with interest at the rate of 7.5% per annum



C.M.A.No.978 of 2020

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 four (4) weeks from the date of receipt of a copy of this judgment. In the above compensation, the appellants are entitled to Rs.2,63,300/- each with proportionate interest and costs. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellants 1 to 4 through RTGS within a period of two (2) weeks thereafter.

13. When the claim petition was filed in the year 2017, the appellants 3 and 4 were aged about 17 and 14 years respectively. Now, the appellants 3 and 4 should be aged about 25 and 21 years respectively and are therefore, majors. Though no application has been taken out to declare them as majors, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the appellants 3 and 4 as majors and discharges their brother namely Sarathkumar from the guardianship. The Registry shall carry out the necessary amendments. Further the Tribunal is directed to deposit the share of the appellants 5 and 6 / minors in an interest heeding fixed



C.M.A.No.978 of 2020

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deposit with anyone of the nationalized banks until they attain majority and the interest derived from out of the said deposit shall be paid to the first appellant of the minor claimants / Rajarajeshwari and Manjula Devi every quarter to be utilized for the welfare of the said minor claimants after attaining majority. It is open to the minor claimants 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 appellants 5 and 6 / minor claimants through RTGS within a period of two weeks thereafter. No costs.

15.11.2024

Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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To

1. Motor Accident Claims Tribunal (District Court), Karaikal
2. The Section Officer, V.R.Section, High Court, Madras.



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C.M.A.No.978 of 2020

M.DHANDAPANI, J.

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C.M.A.No.978 of 2020

15.11.2024