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C.M.A.No.1315 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.1315 of 2023

and

C.M.P.No.13138 of 2023

M/s The National Insurance Co. Ltd.,
No.46, Moore Street,
Chennai 600 001.

... Appellant

Vs.

1. R.Arumugam
2. Kalaiselvi
3. Rani
4. Kumar
5. V.Vijayalakshmi

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 02.01.2023 made in MCOP.No.489 of 2018 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Ms.R.Sree Vidhya

For R1 to R4 : Mr.T.G.Ravichandran

For R5 : No appearance



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JUDGEMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging as against the quantum of compensation awarded by the Motor Accident Claims Tribunal in M.C.O.P.No.489 of 2018 dated 02.01.2023.

2. On 26.12.2018, at about 06.00 hours, the deceased Mrs.Seniammal, who is the wife of first respondent, while crossing the road, was hit by a lorry bearing Reg.No.TN-03-R-0795, which came from the West to East direction. Due to the said accident, the deceased sustained grievous injuries all over her body. Though she was rushed to the Stanley Government Hospital and given treatment, she died on the same day. Therefore, the claimants have filed a claim petition claiming a compensation of Rs.18,00,000/-.

3. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.16,05,700/-. Challenging the same, the appellant/Insurance Company filed the present appeal.



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4. The learned counsel for the appellant/Insurance Company would submit that at the time of accident, the deceased was working as a Vegetable Vendor and was earning Rs.16,000/- per month. As per the report of Ex.P5 and Ex.P7 viz., Deceased's Postmortem and Death Certificate, the Tribunal fixed the notional income of the deceased at Rs.13,000/- per month, which is on higher side, and the same may be reduced to Rs.10,000/- per month. Further, he contented that there is only one dependent viz., husband and all other legal heirs are married, and they are not dependents. Therefore, for the purpose of determining the loss of income $1/3^{\text{rd}}$ has to be deducted instead of $1/4^{\text{th}}$ towards “personal expenses”.

5. Per contra, the learned counsel for the respondents/claimants would submit that the notional income fixed by the Tribunal, is just and fair. Further, he relied on the judgment of Hon'ble Apex Court, in the case of *Syed Sadiq Vs. United India Insurance Company*, reported in **2014 (1) TNMAC 459 (SC)**, wherein the Apex Court fixed the notional monthly income even for a vegetable vendor at Rs.6,500/-, who sustained



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injuries in the accident occurred in the year 2008, by applying the multiplier based on cost inflation index, in the absence of any proof for income, it would come more than a sum of Rs.13,000/-. However, in the present case, as stated above, the deceased was a Vegetable Vendor and aged about 55 years at the time of accident, and applying the cost inflation index, the notional income comes around Rs.13,705/-. Hence, the notional income fixed by the Tribunal is not on the higher side. Accordingly, the learned counsel for the respondents prays to confirm the order of the Tribunal.

6. Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the respondents 1 to 4 and perused the materials available on record.

7. In the present case, as noticed above, the deceased was a Vegetable Vendor and aged about 55 years at the time of accident. Hence, this Court, in the light of the law laid down by the Hon'ble Supreme Court in *Syed Sadiq's* case (cited supra) and taking into consideration of the nature of employment of the deceased and applying the cost inflation, this Court does not find any fault in awarding the



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compensation by the Tribunal. Hence, the notional income fixed by the Tribunal at Rs.13,000/-, is just and fair. Thus, by fixing the notional income of the deceased at Rs.13,000/-; adding 10% future prospects; deducting 1/3rd towards her personal expenses (since the dependent is 1) and by applying right multiplier of '11' (since the deceased was aged 55 years), the compensation towards Loss of Dependency is calculated as under:-

<i>Loss of Income</i>	<i>Amount in Rs.</i>
Notional income (Per month)	13,000
Add: Future Prospects (Rs.13,000 x 10%) (Per month)	1,300
	14,300
Less: Personal expenses (1/3 rd) (Rs.14,300/- x 1/3) (Per month)	4,767
	9,533
Notional income (per annum) (Rs.9,533/- x 12)	1,14,396
Multiplier	11
Total	12,58,356

8. Consequently, the sum of **Rs.14,15,700/-** awarded by the Tribunal under the head of 'Loss of Dependency' is hereby modified to **Rs.12,58,356/-**.



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9. Insofar as the compensation awarded by the Tribunal under other heads are concerned, this Court finds that the same are just and proper and are hereby confirmed. Thus, the total compensation payable to the claimants under various Heads is as hereunder:-

<i>S.No</i>	<i>Head</i>	<i>Amount granted (in Rs.)</i>
1.	Loss of Dependency	12,58,356/-
2.	Loss of Consortium	1,60,000/-
3.	Loss of Estate	15,000/-
4	Funeral Expenses	15,000/-
Total		14,48,356/-
Rounded off		14,48,400/-

10. Accordingly, the Appeal is partly allowed and the impugned Award of the Tribunal is modified by reducing the compensation amount from **Rs.16,05,700/-** to **Rs.14,48,400/-**. The appellant is directed to deposit the said amount to the credit of M.C.O.P.No.489 of 2018 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 six weeks from the



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date of receipt of a copy of this judgment. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the respective bank accounts, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimants or application for withdrawal from the claimant, whichever is later. Further, this Court is directed to deposit a sum of **Rs.8,48,400/-** to the first respondent, who is the husband of the deceased together with proportionate interest; the respondents 2 to 4, the children of the deceased are entitled to a sum of **Rs.2,00,000/-** each with proportionate interest. Since the amount is already deposited, now the excess amount would be available and the same may be returned by the respondents. No costs. Consequently, Connected Miscellaneous Petition is closed.

23.01.2024

Index : Yes / No
NCC : Yes / No
jd

To



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1. The Motor Accident Claims Tribunal,
III Small Causes Court,
Chennai.

2. The Section Officer,
V.R. Section,
High Court, Madras.



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Krishnan Ramasamy,J.,

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