



C.M.A. No.2034 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2034 of 2021

1. Ambika
2. M. Vinothkumar
3. S. Vadivukkarasi
4. Minor M.Vikram

[Minor appellant represented by his mother,
Ambika, the first appellant herein]

5. Santhi (2nd wife)

... Appellants / Petitioners

Vs.

1. J.Suresh
2. Magma HDI Ge. Insurance Co. ltd.,
Door No.98/99, II Floor,
New No.140/150, Luz Church Road,
Mylapore, Chennai – 600 004.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and decree dated 26.02.2021 passed in M.C.O.P. No.2659 of 2018 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Cuddalore.

For Appellants	:	M/s. Ramya V. Rao
For R1	:	No appearance
For R2	:	Mr. Arunkumar



JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No.2659 of 2017, dated 26.02.2021 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Cuddalore.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The brief facts leading to filing of this appeal is that, on 16.11.2017 at about 16.00 hours, while the deceased Marimuthu was walking on the left side of the Cuddalore to Nellikuppam Main Road, opposite to Government Headquarters Hospital, Cuddalore, a motorcycle bearing Registration No.PY 05 6728 came in rash and negligent manner from East to West and dashed against the deceased, resulting which the deceased sustained fatal injuries and subsequently died at the Government Headquarters Hospital, Cuddalore. For the loss of deceased Marimuthu, the claimants, who are the wife, children and 2nd wife of the deceased have filed a claim petition seeking compensation for a sum of Rs.25,00,000/- along



with interest by invoking under Section 166(1) of the Motor Vehicles Act.

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4. The first respondent who is the owner of the vehicle has not contested the claim and was remained ex-parte. The second respondent who is the insurer of the motorcycle has contested the claim and contended that the claimants have to prove that the deceased was died while walking on the road and they have also disputed the age, income, avocation of the deceased and also dependency.

5. The Tribunal after considering the evidences placed on record has held that the rider of the motorcycle and that the respondents are liable to pay compensation. The Tribunal has also quantified the compensation for the death of the deceased at Rs.8,32,800/- and awarded the same in favour of all the claimants.

6. The claimants aggrieved over the quantum of compensation quantified for the death of the deceased Marimuthu have approached this Court for seeking enhancement of compensation.



7. The respondents have not filed any appeal against the Award passed by the Tribunal.

8. The learned counsel for the claimants has submitted that the Tribunal has not properly fixed the notional income of the deceased who was having two families and was earning more than Rs.15,000/- per month. The learned counsel further submitted that the compensation was not awarded under conventional heads, hence prays to refix the notional income fixed by the Tribunal and prays for enhancement of compensation.

9. Per Contra, the learned counsel for the Insurance Company has submitted that the deceased in this case was aged about 59 years and he could not have earned more than the income fixed by the Tribunal and the same is just compensation and prays to confirm the compensation awarded under the head loss of income. However, he concedes that under conventional heads, no compensation has been awarded and the same shall be awarded by the claimants. He further submitted that the claimant Nos.2, 3 and 5 are not the dependents of the deceased since the second claimant was aged about 30 years, third claimant was aged about 27 years and the



fifth claimant being the second wife, she is not entitled to claim compensation. There is no evidence placed on record to show that they are the dependents of the deceased.

10. I have considered the rival submissions made on both sides and also perused the records available.

11. The case of the claimants is that the deceased in this case was a Brick Kiln Employee and was hale and healthy. The first claimant is the first wife through her second and third claimants were born and subsequently, the deceased have married the fifth claimant and fourth minor claimant was born to them.

12. The Tribunal after considering the evidences placed on record has held that all the petitioners are eligible to get compensation for the death of the deceased. However, the fifth petitioner being second wife similarly the second and third petitioners, who are the sons of the deceased living separately have not adduced any evidence to support their case that they are dependent of the deceased. It is fairly conceded that the fifth petitioner is



not entitled to get compensation, based on the same, I am not inclined to grant award any compensation to the fifth petitioner. Similarly there was no evidence placed on record to show the dependency of Claimant Nos.2 and 3, they are not entitled to get compensation. However, considering the fact that the first petitioner is the wife and the fourth petitioner is the minor son of the deceased are entitled to get compensation.

13. As far as the loss of income of the deceased is concerned, he was aged about 59 years and was a Brick Kiln Labourer. Eventhough, they have not produced any income proof, this Court is of the view that the notional income fixed by the Tribunal is on the lower side. Considering the year of accident and the age of the deceased, I am of the view that fixing the notional income to the extent of Rs.12,000/- would be appropriate. The Division Bench judgment of this Court in *Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]* has laid down guidelines for fixing the notional income of various categories of persons whose income has not been proved and based on cost of index filed by CBDT, the notional income was permitted to be fixed, based on the Apex Court judgement of *Syed Sadiq Vs. United India Insurance Company [2014 (1)*



TNMAC 459], fixation of compensation to the deceased herein will be appropriate. Accordingly, considering the year of accident i.e., 16.11.2017 a sum of Rs.13,705/- is fixed as the notional income of the deceased. Considering the age of the deceased, he is also entitled for 10% future prospects as per the Apex Court Judgment in **National Insurance Co. Ltd., vs. Pranay Sethi and other [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]** and as per the Judgment of the Apex Court in **Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]**, the multiplier is fixed as '9' by considering the age of the deceased 59 years at the time of the accident and $\frac{1}{3}^{\text{rd}}$ of income of the deceased shall be deducted for his personal and living expenses and they are also stated that they are all residing together and hence $\frac{1}{4}^{\text{th}}$ of income shall be deducted for his personal expenses. Accordingly, the loss of income is arrived as follows: $[13705 + 1370 (10\% \text{ of } 13705) = 15075 \times 12 \times 9 \times \frac{1}{4}]$
= Rs.12,21,075/-.

14. The claimants are also entitled for compensation under the head loss of consortium for a sum of Rs.40,000/- each accordingly, a sum of Rs.80,000/- is awarded under the head Loss of Consortium. The Tribunal



has awarded compensation of Rs.50,000/- under the head loss of love and affection and as per the Judgment of the Hon'ble Apex Court in ***National Insurance Co. Ltd., vs. Pranay Sethi and other [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]***, the head loss of love and affection included under the head loss of consortium and the dependants are entitled to get loss of consortium, as reiterated in ***United India Insurance Co. Limited vs. Satinder Kaur and Ors [MANU/SC/0500/2020 : (2021) 11 SCC 780]***. As far as the conventional heads such as Funeral Expenses and Loss of Estate are concerned, the Tribunal has awarded a sum of Rs.15,000/- under the head Funeral Expenses and the same is hereby confirmed and the Tribunal has awarded a sum of Rs.15,000/- under the head Transport Expenses and this Court is of the view that the same is hereby modified to the head Loss of Estate.

15. Accordingly, the Award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of Income	Rs.7,12,800/-	Rs.12,21,075/-	Enhanced



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
2.	Loss of Consortium	Rs.40,000/-	Rs.80,000/-	Enhanced
3.	Loss of Love and Affection	Rs.50,000/-	---	Rejected
4.	Transport Expenses / Loss of Estate	Rs.15,000/-	Rs.15,000/-	Modified
5	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
	Total Compensation	Rs.8,32,800/-	Rs.13,31,075/-	Enhanced by Rs.4,98,275/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,32,800/- is hereby enhanced to Rs.13,31,075/- [Rupees Thirteen Lakhs Thirty One Thousand and Seventy Five only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount now awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2659 of 2017 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Cuddalore. On such



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deposit, the first appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. The share of the minor appellant is directed to be deposited in any one of the Nationalized Bank till the minor appellant attains majority. On such deposit, the first appellant being the mother of the minor appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellant. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. In other aspects the award of the Tribunal shall stands confirmed. There shall be no order as to costs in the present appeal.

24.01.2024

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:

1. The I Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Cuddalore.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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K. RAJASEKAR, J.

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