



C.M.A.No.2075 of 2022

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 24.01.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

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1. Sathya
 2. Gopika (Minor)
 3. Suji (Minor)
- (Minors appellants 2 and 3 are rep. by
their Guardian, mother/first appellant)

... Appellants

Vs.

1. Narayanan
2. New India Assurance Company Ltd
situated at Divisional Office,
Jawaharlal Nehru Street, Pondicherry.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 05.03.2022 made in M.C.O.P.No.120 of 2020, on the file of the Motor Accident Claims Tribunal/III Additional District Court, Villupuram @ Kallakurichi.



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For Appellants : Mr.K.Suryanarayanan
Respondent-1 : No appearance
Respondent-2 : M/s.A.Salomi

JUDGEMENT

This Civil Miscellaneous Appeal is preferred by the claimants, aggrieved by the award passed by the Motor Accident Claims Tribunal cum III Additional District Court, Villupuram @ Kallakurichi, in M.C.O.P.No.120 of 2020 (hereinafter, referred to as 'the Tribunal') dated 05.03.2022.

2. On 07.03.2020, at about 06.30 hours when the deceased was riding a two wheeler, viz., bearing Regn.No.TN 15-T-3299, at Kallakurichi to Sankarapuram Main Road, near Pachaiyamman Modern Rice Mill, Raodmamandur Village, the first respondent's Tipper, bearing Registration No. TN-32-P-7216 and Trailer, bearing Regn No.TN-25-AE-5612 came in a rash and negligent manner and dashed against the deceased's two-wheeler, and thereby, caused the death of the deceased. Hence, the claimants, viz., wife and two children of the deceased filed a Claim Petition seeking a sum of Rs.30,00,000/- as compensation.



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3. The Tribunal on consideration of oral and documentary evidence held that the accident occurred due to rash and negligence on the part of the Driver of the first respondent's Vehicle, and hence, directed the respondent/Assurance Company to pay a compensation of Rs.19,92,000/- to the claimants together with interest at the rate of 7.5% p.a. from the date of filing of the Petition and till the date of deposit.

4. Aggrieved over the award passed by the Tribunal, the appellants/claimants have filed the present appeal seeking for enhancement of compensation, as stated supra.

5. Mr.K.Suryanarayanan, learned counsel appearing for the appellants contended that the accident took place in the year, 2020 and at the time of the accident, the deceased was a Driver earning a monthly income of Rs.30,000/-, however, the Tribunal, while determining the compensation under the head, 'Loss of Dependency', fixed a sum of Rs.10,000/ p.m. which is meagre. Hence, the learned counsel prays that



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some reasonable amount may be fixed towards the notional monthly income of the deceased and accordingly, compensation may be determined towards the Loss of Dependency.

5.1 The learned counsel also fairly submitted that the award of compensation by the Tribunal under the heads 'Funeral Expenses' at Rs.25,000/- and Loss of Love and Affection at Rs.1,20,000/- are on the higher side and the same may be appropriately reduced. Insofar as the award of compensation under other heads are concerned, the learned counsel prayed that the same may be confirmed.

6. Despite service of notice, the first respondent, viz., the owner of the offending vehicle has not appeared. Hence, the first respondent is set ex parte.

7. Ms.A.Salomi, the learned counsel appearing for the second respondent/Insurance Company also fairly accepted that the notional monthly income of the deceased fixed by the Tribunal at a sum of



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Rs.10,000/- is too low and submitted that any reasonable amount may be fixed based on the age, income and occupation of the deceased and that, she is also agreeable for fixation of a sum of Rs.16,000/- as notional monthly income of the deceased, as suggested by this Court.

8. I have given due considerations to the submission made by the learned counsel for the appellants and the learned counsel for the second respondent/Assurance Company and perused the materials available on record.

9. At the time of the accident, which occurred in the year, 2020, the deceased was a Driver cum Owner of the Tractor, and there is no dispute with regard to the same. Therefore, the Tribunal, while determining compensation towards Loss of Dependency, having accepted the occupation of the deceased, ought not to have went to the extreme level of thinking that the deceased was Driver Cum Owner of the Tractor, and on his demise, the claimants would have done the said work and run the family and that had the deceased earned Rs.30,000/- p.m. obviously, he would have been an



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income tax assessee and in the absence of any such documents, fixation of Rs.10,000/- would be appropriate.

9.1 This Court would like to point out that when it comes to fixation of notional income of the deceased, while determining the compensation towards Loss of Dependency, the Tribunal has to go by the age, income and occupation of the deceased and it need not go beyond the same and fix income of the deceased on imagination basis, which is not fair. In this context, this Court is inclined to refer to a decision rendered by the Hon'ble Apex Court, in the case of **Syed Sadiq Vs. United India Insurance Company**, reported in **2014 (1) TNMAC 459 (SC)**, wherein, notional monthly income even for a vegetable vendor who sustained injuries in the accident occurred in the year 2008 was fixed at Rs.6,500/-, by applying the multiplier based on cost inflation index, in the absence of any proof for income. Therefore, this Court is of the view that fixation of Rs.10,000/- for a deceased, who was a Driver and died in the accident occurred in the year 2020 is too low.



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9.2 Thus, this Court, taking into consideration of the age (33 years) income (Rs.30,000/- p.m.) and occupation of the deceased (Driver cum Owner of a Tractor) and year of the accident, deems it appropriate to fix the notional monthly income of the deceased at Rs.16,000/-, which would be just and reasonable. Thus, by fixing the notional monthly income of the deceased at Rs.16,000/-; adding 40% towards future prospects; deducting 1/3rd towards his personal expenses (since the dependents are three in numbers) and by applying right multiplier of '16' (since the deceased was aged 33 years, 9 months and 18 days), the compensation towards Loss of Dependency is calculated as under:-

Notional Monthly income + 40% future prospects
(i.e. Rs.16,000/- + Rs.6,400) = Rs.22,400/-

(Deduction of $\frac{2}{3}$ x (Multiplier of '16')
towards personal expenses)
14,933 x 12 x $\frac{2}{3}$ x 16 = Rs.28,67,200/-

9.3 Consequently, the sum of Rs.17,92,000/- awarded by the Tribunal under the head of 'Loss of Dependency' is hereby modified and



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enhanced to **Rs.28,67,200/-**.

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9.4 As far as the compensation fixed by the Tribunal towards Funeral Expenses at Rs.25,000/- is concerned, since the same is against the ratio laid down by the Honourable Supreme Court of India in **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **2017 (2) TN MAC 601**, the award passed by the Tribunal towards the said head is modified and stands reduced to Rs.15,000/-.

9.5 Similarly, the award of compensation under the heads 'Loss of Love and Affection at Rs.1,20,000/- is also on the higher side, which has been fairly admitted by the learned counsel for the appellants, and therefore, the same is reduced to Rs.80,000/-

9.6 Insofar as the compensation awarded by the Tribunal under all other heads are concerned, this Court finds the same to be just and proper and is hereby confirmed.

10. Thus, the total compensation payable to the appellants/claimants



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under various Heads is as hereunder:-

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<i>S.No</i>	<i>Head</i>	<i>Amount granted</i>
1.	Loss of Dependency	Rs.28,67,200/-
2.	Loss of Consortium	Rs. 40,000/-
3.	Loss of Love and Affection	Rs. 80,000/-
4	Funeral Expenses	Rs. 15,000/-
5	Loss of Estate	Rs. 15,000/-
Total		Rs.30,17,200/-

10.1 Consequently, the total compensation amount of Rs.19,92,000/- awarded by the Tribunal is hereby modified and enhanced to **Rs.30,17,200/-** which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit, out of which, first appellant, the wife of the deceased is entitled to a sum of **Rs.15,17,200/-** together with proportionate interest and the appellants 2 and 3, the children of the deceased is entitled to a sum of **Rs.7,50,000/-** each together with proportionate interest.



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11. In the result, this Civil Miscellaneous Appeal filed by the appellants/claimants is partly allowed on the following terms:-

(i) The second respondent, New India Assurance Co. Ltd., is directed to deposit the entire amount awarded by this Court equally along with interest at the rate of 7.5 % p.a. and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the Assurance Company, the Tribunal shall transfer the amount directly to the claimants' respective bank accounts through RTGS within a period of three weeks thereon.

(iii) The appellants/claimants are entitled to withdraw the entire award amount by making necessary application before the Tribunal.

iv) As regards the award amount to be disbursed to the minor claimants, the appellants 2 and 3 is concerned, on deposit of the award



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amount being made by the second respondent/Assurance Company, Tribunal shall transfer the entire award amount belonging to the minors, in their names, in any of the Nationalized Bank, in an interest bearing FD Account till the minors attain majority and the interest accrued thereon shall also be retained in their account, and once, the minors attained Majority, Tribunal shall take steps to settle the award amount to the claimants in accordance with law.

v) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any.

vi) However, there shall be no order as to costs.

24.01.2024

To

The III Additional District Judge,
Motor Accident Claims Tribunal,
Villupuram @ Kallakurichi.

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Krishnan Ramasamy,J.,
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