



C.M.A.No.2722 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2722 of 2021

1.B.Subashini

2.B.Sathish

3.B.Sundeeep

... Appellants

Vs.

1.C.Ezhil Vendan

2.Shek Mansoor Ahamad

3. Royal Sundaram Alliance Insurance Company Ltd.,
Rep. by its Manager (Legal) Motor Third Party Claims Cell,
Subramaniyam Building,
2nd Floor, No.1, Club House Road,
Chennai - 600 002.

... Respondents

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree dated 24.10.2019 made in M.C.O.P. No.460 of 2016 on the file of the Motor Vehicle Claims Tribunal / District & Sessions Judge, Additional District Court (Fast Track Court), Kanchipuram.

For Appellants : Mr.K.Varadhakamaraj

For Respondents : Mr.C.Harini

**JUDGMENT**

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2. The Tribunal under the impugned award directed the third respondent to pay the appellants a compensation of Rs.3,22,648/- together with interest at the rate of 7.5% per annum from the date of claim till the date of payment as detailed hereunder:

<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>
Loss of income	2,52,648
Funeral Expenses	15,000
Loss of consortium	40,000
Loss of estate	15,000
Total	3,22,648

3. The appellants have challenged the impugned award primarily on the ground that the Tribunal has erroneously fixed the notional monthly income of the deceased at Rs.2,610/- based on the pension received by him



as on the date of the accident, which according to the appellants is too low.

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4. Admittedly, the deceased was a retired employee of the Transport Corporation and he was receiving monthly pension of Rs.2,610/-. He was aged 54 years on the date of the accident. The earlier avocation of the deceased as well as the age of the deceased have not been disputed by the third respondent Insurance Company. The appellants / claimants, however, had pleaded before the Tribunal as well and they have also deposed that subsequent to his retirement from the Transport Corporation, the deceased was working as a driver.

5. In the claim petition, the appellants / claimants had pleaded that the deceased was earning Rs.30,000/- per month at the time of the accident. The accident happened in the year 2016. No contra evidence has also been produced by the Insurance Company to disprove the contention of the appellants / claimants that the deceased was working as a driver at the time of the accident.



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6. Only based on the pension, the deceased was receiving at the time of the accident, from his earlier employment, the Tribunal has fixed the notional monthly income of the deceased at Rs.2,610/-, which is not correct as the deceased was subsequently employed as a driver in a private concern which was also not disproved by the third respondent Insurance Company by producing any contra evidence. Since the accident happened in the year 2016 and after giving due consideration to the fact that the deceased was working as a driver at the time of the accident, the Tribunal ought to have fixed the notional monthly income of the deceased at a higher sum. Though the appellants / claimants may not be entitled to fix the notional monthly income of the deceased at Rs.30,000/- as claimed in the claim petition, after giving due consideration to the year of the accident, which happened in the year 2016, this Court fixes the notional monthly income of the deceased on the date of the accident at Rs.10,000/- instead of Rs.2,610/- erroneously fixed by the Tribunal under the impugned award.

7. Excepting for enhancing the notional monthly income of the deceased to Rs.10,000/- per month from Rs.2,610, the compensation awarded by the Tribunal under various other heads viz., future prospects,



funeral expenses, loss of consortium, loss of estate are concerned, this Court is of the considered view that the compensation awarded by the Tribunal under those heads by the Tribunal is a just compensation. However, the Tribunal has erroneously not granted compensation towards loss of love and affection, which the appellants / claimants are legally entitled to as per the decision rendered by the Honourable Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and Others*** reported in ***2017 (16) SCC 680***.

8. Since the first appellant is the wife and the second and third appellants are the children of the deceased, each of them are entitled to Rs.40,000/- as compensation towards loss of love and affection which the Tribunal has failed to award.

9. For the foregoing reasons, the compensation awarded by the Tribunal is re-worked in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>	<i>Amount awarded by this Court (Rs.)</i>
Loss of income	2,52,648	9,68,088
Funeral Expenses	15,000	15,000



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<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>	<i>Amount awarded by this Court (Rs.)</i>
Loss of consortium	40,000	40,000
Loss of estate	15,000	15,000
Loss of love and affection	-	1,20,000
Total	3,22,648	11,58,088

10. In the result, this Civil Miscellaneous Appeal is **partly allowed** by enhancing the award amount from **Rs.3,22,648/-** to **Rs.11,58,088/-**. The third respondent / Insurance Company is directed to deposit the enhanced award amount, after deducting the amount already deposited, if any, together with interest at the rate of **7.5%** per annum from the date of the claim petition till the date of deposit and cost to the credit of **M.C.O.P. No.460 of 2016** on the file of the **Motor Vehicle Claims Tribunal / District & Sessions Judge, Additional District Court (Fast Track Court), Kanchipuram**, within a period of **four weeks** from the date of receipt of a copy of this judgment.

11. The appellants / claimants are permitted to withdraw the said amount, once it is deposited by the third respondent/Insurance Company, by filing an appropriate application before the Tribunal. On such application being made, the Tribunal shall transfer the amount lying to the credit of



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M.C.O.P. No.460 of 2016 to the bank account of the appellant(s) directly through RTGS, within a period of **one week** thereafter. No costs.

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

1. The Motor Vehicle Claims Tribunal / District & Sessions Judge, Additional District Court (Fast Track Court), Kanchipuram
2. The Section officer, Record Section, High Court of Madras.



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ABDUL QUDDHOSE. J.,

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