



C.M.A.No.3138 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.12.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

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1.Rathinam

2.Prema

3.Gopalakrishnan

4.Kunchal

... Appellants

Vs.

1.Kannan

2.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Kangeyam Road, Tiruppur.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, pleaded to enhance the compensation amount made in Judgment and decree dated 01.02.2024 made in M.C.O.P.No.18 of 2023 on the file of the Special District Judge, MCOP Tribunal, Salem, by allowing this Civil Miscellaneous Appeal.



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For Appellants : Ms.L.Manisha
For Respondents : Notice dispensed with [R1]
Mr.M.Murali Vinodh [R2]

JUDGMENT

The claimants are before this Court seeking an enhancement of the compensation amount passed by the Special District Judge, MCOP Tribunal, Salem in M.C.O.P.No.18 of 2023 dated 01.02.2024.

2. In view of the judgment, which is going to be passed in this appeal, notice to the 1st respondent is dispensed with.

3. The appellants/claimants are the wife, daughter, son and mother of the deceased Murugesan. On 22.07.2022 at about 12.20 p.m., when the deceased was riding a two-wheeler bearing Regn.No.TN-39-F-6882 on his side in Koduvai – Kangeyam road near Aandipudur Mahaliammam koil, the 1st respondent driven the bus bearing bearing Regn.No.TN-39-N-0021



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belonging to the 2nd respondent/Transport Corporation, in a rash and negligent manner in the opposite direction and hit against the two-wheeler, due to which, the said Murugesan died in the way of G.H., Kangeyam. Therefore, the appellants/claimants have filed a claim petition claiming compensation for a sum of Rs.40,00,000/- before the Tribunal in M.C.O.P.No.130 of 2018 for the death of the deceased.

4. Before the Tribunal, the 1st claimant had examined herself as P.W.1 and marked 11 documents viz., Ex.P.1 to Ex.P.11. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal partly allowed the petition and awarded a sum of Rs.13,15,000/- as compensation to the claimants. Not satisfied with the same, the appellants have preferred the present appeal seeking enhancement.

5. Learned counsel appearing for the appellants submitted that the notional income of the deceased including the future prospects, fixed by the



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Tribunal is on the lower side, which requires to be re-considered by this Court. That apart, the amount awarded under the head of loss of love and affection was also on the lower side and was 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***. Further, she submitted that the Tribunal has not awarded any compensation towards loss of estate as per the judgment of the Apex Court in *Pranay Sethi's* case (supra). Accordingly, she prays for appropriate enhancement in favour of the appellants.

6. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, by considering all the oral and documentary evidence, the Tribunal has awarded just and reasonable compensation under various heads, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.



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7. Heard the learned counsel appearing for the appellants and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

8. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The only grievance of the claimant is with regard to the quantum of compensation awarded by the Tribunal. To compute the income under the head loss of income, no document in support of proof of the income of the deceased has been filed. However, it is claimed by the appellants/claimants that, at the time of accident, the deceased was earning not less than Rs.25,000/- p.m. by doing Samiyana bundal work. As per the decision of the Hon'ble Apex Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, notional income of a vegetable vendor is fixed at Rs.6,500/-, where income of the deceased is not proved through documentary evidence. However, the Tribunal had fixed a sum of Rs.10,000/- as notional income including the future prospects, which is on



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the lower side, since the accident had occurred in the year 2022. Hence, by applying the ratio laid down by the Hon'ble Supreme Court in *Syed Sadiq's* case, fixing a notional income of Rs.15,000/- and adding future prospects at 25%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.18,750/-. Deducting 1/4th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.13,883/- per month and the deceased being aged about 48 years, as evidenced from the records, adopting the multiplier of 13 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in **(2009) 6 SCC 121**, the loss of income to the family is arrived at Rs.13,883/- * 12 * 13 = Rs.21,65,748/-, which is worked out as follows :-

Loss of Income	Amount (in Rs.)
Notional income (Per month)	15,000
Add: Future Prospects (Rs.15,000 x 25%) (Per month)	3,750
	18,750



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Loss of Income	Amount (in Rs.)
Less: Personal expenses (1/4 th) (Rs.18,750/- x 1/4 th) (Per month)	4,687.5
	14,062.5
Rounded off to	14,062
Notional income (per annum) (Rs.14,062/- x 12)	1,68,744
Multiplier	13
Total	21,93,672

9. Further, the Tribunal had awarded a sum of Rs.80,000/- towards loss of love and affection; Rs.40,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. This Court finds that the compensation awarded under the head loss of consortium is just and reasonable and the same is confirmed. However, insofar as the compensation awarded towards loss of love and affection is concerned, this Court feels that the appellants 2 to 4 are entitled to a sum of Rs.40,000/- each. Further, the compensation awarded under the head funeral expenses is on the higher side and the same is reduced to a sum of Rs.16,500/-. Since no compensation has been awarded towards loss of estate, this court awards a sum of Rs.16,500/- under this head.



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

S. No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Loss of income	11,70,000/-	21,93,672/- (enhanced)
2	Loss of love and affection (Rs.40,000/- x 3)	80,000/-	1,20,000/- (enhanced)
3	Loss of consortium	40,000/-	40,000/-
4	Funeral expenses	25,000/-	16,500/- (reduced)
5	Loss of estate	-	16,500/-
	Total	13,15,000/-	23,86,672/-

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.13,15,000/-** to **Rs.23,86,672/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.18 of 2023 along with interest at the rate of 7.5% per



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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 eight (8) weeks from the date of receipt of a copy of this judgment. The above modified compensation amount shall be apportioned among the appellants as per the apportionment of the Tribunal. On such deposit being made, the Tribunal is directed to transfer the share of the appellants directly to their respective bank accounts through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants. The appellants/claimants are directed to pay necessary additional Court fee on the enhanced compensation amount. It is made clear that the appellants will not entitled to any interest for the delay period. No costs.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

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