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C.M.A.No.2426 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2426 of 2023

1. V.Thamizhselvi
2.V.Ramachandran

.. Appellants

Vs.

1. Aruldasan. R.

2. The Divisional Manager
United India Insurance Co.Ltd.,
DO, 13A Nethaji Road,
Cuddalore-607 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.03.2023 made in M.C.O.P.No.1425 of 2019 by the learned Motor Accident Claims Tribunal/Principal District Court, Cuddalore.

For Appellant : Ms.Ramya V.Rao

For Respondents : No appearance (R1)
Ms.R.SreeVidhya (R2)



J U D G M E N T

WEB COPY This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 21.03.2023 made in M.C.O.P.No.1425 of 2019 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Cuddalore.

2. The appellants are the claimants in M.C.O.P.No.1425 of 2019 on the file of *Motor Accidents Claims Tribunal/Principal District Judge, Cuddalore*. They filed the above said claim petition, claiming a sum of **Rs.20,00,000/-** as compensation for the death of one Vilvanathan, who died in an accident that took place on 05.07.2019.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of **Rs.8,65,000/-** as compensation to the appellants.

4.Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of



compensation.

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5. Though several grounds have been raised in this Civil Miscellaneous appeal, the learned counsel for the appellants restricts his claim with regard to Loss of Income and Loss of Love and Affection alone. The learned counsel appearing for the appellants contended that the deceased Vilvanathan was a carpenter and was earning a sum of Rs.25,000/- per month, but the Tribunal has fixed only a sum of Rs.8,000/- as monthly income while determining the compensation towards Pecuniary Loss and requested this Court to fix the notional income as per *Andal and two others Vs. Avinav Kannan and New India Assurance Company Ltd., Chennai* reported in **2019 (1) TNMAC 54 (DB)**. She further submitted that the Tribunal has taken the age of the deceased as 52 years based on the Post Mortem Report and applied the multiplier 11 which is not proper as the date of birth of the deceased mentioned in the Aadhar card is 29.07.1969 and therefore he would be only 50 years at the time of accident and the multiplier to be adopted should be 13. She further submitted that the Tribunal awarded meager compensation towards Loss of Affection to the son and the same needs to be enhanced.



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6.Per contra, learned counsel appearing for the 2nd respondent-Insurance Company contended that since the appellants have not filed any documentary evidence in order to prove that the deceased was earning a sum of Rs.25,000/- per month, the Tribunal has fixed the notional monthly income of the deceased at Rs.8,000/- and the same is reasonable. He further submitted that the compensation awarded towards Loss of Love and Affection to the son is also reasonable and that apart the total compensation awarded by the Tribunal under various heads is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

8. It is the case of the appellants that at the time of accident the deceased was aged 50 years and was a carpenter and earning a sum of Rs.25,000/- per month. But no documents have been filed to that effect. The Tribunal relying upon the Judgment of this Court in the case of *Mythili and*



others Vs. Lakshmi and another reported in **2019 (1) TN MAC 563** and

also the considering the age and avocation of the deceased has fixed the monthly income at Rs.8,000/- per month, which in the opinion of this Court is very low and hence this Court decides to apply the cost of inflation index as issued by the Central Board of Direct Tax (CBDT) for the purpose of determination of notional income of the deceased as per the Judgment of this Court in *Andal and two others Vs. Avinav Kannan and New India Assurance Company Ltd., Chennai* reported in **2019 (1) TNMAC 54 (DB)**.

By taking note of the same, this Court fixes a sum of Rs.14,562/- ($6500 \times 289 / 129$) as notional income of the deceased and by adding future prospects @10%, a sum of Rs.16,018/- is arrived . Though the learned counsel for the appellants requested this Court to take the age of the deceased as 50 years as per Aadhar card and adopt multiplier 13, this court is not inclined to do so. The multiplier adopted by the Tribunal, by taking note of the age of the deceased as per Postmortem report is confirmed and by applying the multiplier 11 a sum of Rs.21,14,376/- ($16,018 \times 12 \times 11$) is arrived and by deducting 1/3rd towards personal expenses, a sum of **Rs.14,09,584/-** is awarded towards **Pecuniary Loss** and hence the compensation towards Pecuniary Loss is enhanced from Rs.7,74,400/- to Rs.14,09,584/-. The



Tribunal awarded a sum of Rs. 20,000/- towards **Loss of Love and Affection** to the son, which is very low and therefore the same is enhanced to Rs.40,000/-. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary Loss	7,74,400/-	14,09,584/-	Enhanced
2.	Loss of Consortium (wife)	40,000/-	40,000/-	Confirmed
3.	Love and Affection	20,000/-	40,000/-	Enhanced
4.	Loss of Estate	15,000/-	15,000/-	Confirmed
5.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total	Rs.8,64,400/-	Rs.15,19,584/-	Enhanced by Rs.6,55,184 /-

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,64,400/- is hereby enhanced to Rs.6,55,228/- together with interest at the rate of 7.5% per



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annum from the date of petition till the date of deposit. The Claimants are entitled to the compensation as apportionment made by the Tribunal. The 2nd respondent-Insurance Company is directed to deposit the award amount now determined 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.1425 of 2019** on the file of the Motor Accidents Claims Tribunal/Principal District Judge, Cuddalore . On such deposit being made, the Tribunal is directed to transfer the Award amount, as apportioned by the Tribunal, directly to the Bank account of the Appellants/Claimants through RTGS, within a period of **three weeks**. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving interest for the period of delay in question, the interest portion for that period should be excluded for the purpose of granting interest. No costs.

08.01.2024

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Index : Yes / No
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To

1. The Divisional Manager
United India Insurance Co.Ltd.,
DO, 13A Nethaji Road,
Cuddalore-607 001.
2. The Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.
3. The Section Officer,
VR Section,
High Court,
Madras.



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KRISHNAN RAMASAMY, J.

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