



C.M.A.No.2486 of 2022

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 15.02.2024

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The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.2486 of 2022

1. Munilakshmi
2. Yuvaraj
3. Gajalakshmi
4. Swarna
5. Krishnamurthy
6. Gayathri
7. Devi

... Appellants

Vs.

1. P.Andavan
2. The Manager,
ICICI Lombard General Insurance Co. Ltd.,
Servicing Office at 2nd Floor,
SVR Complex, Hosur Main Road,
Bangalore- 560068.Karnataka State.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 10.11.2021 made in M.C.O.P.No.1228 of 2019, on the file of the Motor Accident Claims Tribunal/Special District Court, Krishnagiri.



C.M.A.No.2486 of 2022

For Appellant : Mr. S.P.Yuaraj

For Respondent-1 : M/s.Eswar Kumar and Roa
No appearance

Respondent-2 : Mrs.R.Sree Vidhya

JUDGEMENT

Questioning the quantum of compensation awarded by the Tribunal, the present Appeal has been preferred by the appellants/claimants.

2. On 26.03.2018 at about 3.30 a.m. when the deceased Krishnasamy was travelling in a Tata Sumo, bearing Registration No.TN-04-F-7618 at Dharmapuri to Krishnagiri National Highways Road, near Avathanapatti Mariamman Temple Flyover, first respondent's Vehicle, viz., Tata 407 Tempo, bearing Registration No.TN-KA-01-AH-3989 driven by its driver in a rash and negligent manner, came in the same direction and dashed on the back of the Tata Sumo. Due to the said accident, the deceased sustained grievous injuries and died on the same date. Hence, the claimants, who are wife, sons and daughters of the deceased filed a Claim Petition seeking a sum of Rs.35,00,000/- as compensation.



C.M.A.No.2486 of 2022

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, Tata 407 Tempo and hence, directed the second respondent/Insurance Company to pay a compensation of Rs.11,65,360/- 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. Not being satisfied with the quantum of compensation awarded passed by the Tribunal, the appellants/claimants have filed the present appeal seeking for enhancement of compensation.

5. As the present Appeal is filed only questioning the quantum of compensation awarded by the Tribunal, this Court is not traversing into the other aspects of the award passed by the Tribunal.

6. Mr.S.P.Yuaraj, learned counsel appearing on behalf of appellants/claimants submitted that the Tribunal, while determining the



C.M.A.No.2486 of 2022

compensation towards 'Loss of Dependency', fixed the notional monthly income of the deceased at Rs.9,000/- which is meager. The learned counsel would submit that at the time of the accident, i.e. on 26.03.2018, the deceased was aged about 60 years, Self Employed (Agriculturist and Politician); earning Rs.25,000/- per month, and died leaving behind him his wife, two sons and four daughters as dependants, whereas, the Tribunal, in the absence of income proof produced by the appellants, fixed the notional income of the deceased only at Rs.9,000/-p.m., which has resulted in awarding inadequate compensation of Rs.8,55,360/- under the said head, and hence, prayed that some reasonable amount may be fixed as notional monthly income of the deceased and compensation may be determined accordingly.

7. Per contra, Mrs.R.Sree Vidhya, learned counsel appearing for the second respondent/Insurance Company would submit that though no appeal or cross appeal is filed by the Insurance Company, however, contended that the deceased was aged about 60 years and it is trite law that in motor accident cases, for the age group of 50-59, there is no question of



C.M.A.No.2486 of 2022

adding future prospects, whereas, the Tribunal, determined compensation towards Loss of Dependency, by mistakenly adding 10% towards Future Prospects, which is incorrect. Further, the learned counsel submitted that the appellants 3, 4, 6 and 7 are married daughters and sons are employed, and therefore, the Tribunal ought not to have made deduction of 1/5 while computing compensation towards Loss of Dependency, and similarly, only the first claimant/first appellant alone is entitled for Consortium at Rs.40,000/- and other claimants are not entitled to Rs.40,000/-. Hence, the learned counsel submitted that the award passed by the Tribunal warrants interference of this Court.

8. I have given due consideration to the submissions made by the learned counsel for the appellants/claimants and the learned counsel for the second respondent/Insurance Companies and perused the materials available on record.

9. It is not in dispute that at the time of the accident, i.e. 26.03.2018, deceased was aged 60 years. Therefore, as rightly pointed out



C.M.A.No.2486 of 2022

by the learned counsel for the second respondent/Insurance Company, for Sexagenarians, (i.e for the persons between 50-59), while determining compensation towards 'Loss of Dependency' or 'Loss of Income due to Disability', there is no question of adding future prospects, whereas, in the present case, the Tribunal, while determining compensation towards Loss of Dependency, committed an error in adding 10% towards Future Prospects, which is incorrect. Further, the Tribunal also committed a mistake by making deduction of 1/5 by considering the appellants 3, 4, 6 and 7 as dependents since they are all married daughters, which facts were even fairly admitted by the learned counsel appearing for the appellants/claimants. However, insofar as the notional monthly income fixed by the Tribunal is concerned, at a sum of Rs.9,000/- this Court is of the view that the same is on the lower side and it would be just and proper to fix a sum of Rs.12,000/- as monthly income of the deceased.

9.1. Thus, by taking the notional monthly income of the deceased Rs.12,000/-; applying the multiplier '9' (since the deceased was aged 60 years) and deducting 1/3 towards personal expenses (since the dependents



C.M.A.No.2486 of 2022

are three in numbers) this Court is proceeding to re-determine the compensation awarded by the Tribunal under the head, 'Loss of Dependency' in the following manner:-

$$\text{Rs.12,000/-} \times 12 \times 9 \times \frac{2}{3} = \text{Rs.8,64,000/-}.$$

9.2 Consequently, the sum of Rs.8,55,360/- awarded by the Tribunal under the head of 'Loss of Dependency' is hereby modified and enhanced to **Rs.8,64,000/-**

9.3 Insofar as the compensation awarded by the Tribunal under the head, Loss of Consortium is concerned, it is seen that the Tribunal has committed an error in awarding Rs.40,000/- to all the claimants/appellants, and as rightly submitted by the learned counsel for the second respondent/Insurance Company only the first appellant, the wife of the deceased alone is entitled to Rs.40,000/- and other appellants/claimants are concerned, each are entitled to receive compensation only at a sum of Rs.20,000/- under the head, Loss of Love and Affection. Consequently,



C.M.A.No.2486 of 2022

Rs.2,80,000/- awarded by the Tribunal under the head, 'Loss of Consortium'

is modified in the following manner:-

Loss of Consortium to wife	=Rs.40,000/-
Loss of Love and Affection (Rs.20,000 x claimants 2 to 7)	=Rs. 1,20,000/-

9.4 It is seen from the impugned award that no compensation was awarded by the Tribunal under the head, 'Transportation' and hence, a sum of Rs.10,000/- is awarded by this Court under the said head.

9.5 So far 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 under various Heads is as hereunder:-



C.M.A.No.2486 of 2022

S.No	Head	Amount granted
1.	Loss of Dependency	Rs.8,64,000/-
2.	Loss of Estate	Rs. 15,000/-
3.	Loss of Consortium to wife Rs.40,000/-	Rs. 40,000/-
4	Loss of Love and Affection to sons and daughters (20,000/- x6)	Rs. 1,20,000/-
4	Funeral Expenses	Rs. 15,000/-
5	Transportation	Rs. 10,000/-
Total		Rs.10,64,000/-

10.1 Consequently, the total compensation amount of **Rs.11,65,360** awarded by the Tribunal is hereby modified and reduced to **Rs.10,64,000/-** 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.7,64,000/-** together with proportionate interest and the appellants 2 to 7, sons and daughters of the deceased are entitled to a sum of **Rs.50,000/-** each together with proportionate interest.



C.M.A.No.2486 of 2022

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

(i) The second respondent, Insurance Company is directed to deposit the entire amount awarded by this Court 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 Insurance 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 their respective share by making necessary application before the Tribunal.

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

15.02.2024

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C.M.A.No.2486 of 2022

WEB COPY To

The Special District Judge,
Motor Accident Claims Tribunal, Krishnagiri.



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C.M.A.No.2486 of 2022

Krishnan Ramasamy,J.,
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C.M.A.No.2486 of 2022

15.02.2024