IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 25.07.2024

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.No.2063 of 2022

Palaniyammal
1.Sundarammal
2.Sarasu
3.Ponnaya
4.Manivannan
5.Sivasakthi .. Appellants

Vs

1.Mani

2.The United India Insurance Co. Ltd.,
No.2, Dr.Sankaran Road,
Namakkal District. .. Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 22.03.2022, passed in M.C.O.P.No.1129 of 2017, on the file of the Motor Accident Claims Tribunal, Sessions Judge, Special Court for trial of cases registered under SC/ST (POA) Act, Namakkal.

For Appellants	: Mr.T.S.Arthanareeswaran
For R2	: M/s.I.Malar
R1 – not known	

JUDGMENT

This appeal has been filed by the claimants/appellants seeking for enhancement of compensation.

2. The Tribunal, under the impugned award, directed the second respondent Insurance Company to pay the claimants a compensation of Rs.3,58,000/- for the death of Kandasamy, who died due to an accident caused by a vehicle insured with the second respondent Insurance Company. The details of the compensation awarded by the Tribunal are as follows:-

Loss of dependency	- Rs.2,25,000/-
Love and affection	- Rs.1,00,000/-
Funeral expenses	- Rs.16,500/-
Loss of estate	- Rs.16,500/-
Total	**- Rs.3,58,000/-**

3. The deceased Kandasamy was aged about 70 years at the time of the accident, which happened in the year 2017. He was an agriculture

labourer. In the claim petition, the claimants/appellants herein pleaded that the deceased was earning a sum of Rs.12,000/- per month. However, since no documentary evidence was produced to substantiate the monthly income of the deceased, the Tribunal has fixed the notional monthly income of the deceased at Rs.5,000/-. Though the deceased was aged about 70 years at the time of the accident, the fixation of his notional monthly income at Rs.5,000/- by the Tribunal is an incorrect assessment. The Tribunal ought to have taken note of the avocation and the year of the accident before assessing the notional monthly income of the deceased. Eventhough the deceased was aged about 70 years at the time of the accident, this Court, after giving due consideration to the avocation of the deceased as well as the year of the accident, enhances the notional monthly income of the deceased from Rs.5,000/- to Rs.10,000/-.

4. The Tribunal has also committed an error in deducting $1/4^{th}$ towards personal expenses of the deceased. The first claimant is his wife and she is no more now; the claimants 2 and 3 are his daughters, the fourth claimant is daughter-in-law and the claimants 5 and 6 are his grandsons. The dependents of the deceased Kandasamy are the claimants 2 and 3 and the remaining claimants are not the dependents. Therefore,

the Tribunal ought to have deducted 1/3rd towards personal expenses of the deceased. Accordingly, this Court modifies deduction to 1/3rd instead of 1/4th erroneously fixed by the Tribunal. The Tribunal has rightly adopted multiplier '5' after giving due consideration to the age of the deceased Kandasamy, who was aged about 70 years at the time of the accident. Since the notional monthly income of the deceased is enhanced to Rs.10,000/- from Rs.5,000/-, the compensation towards loss of income is re-worked in the following manner:-

Monthly income	-- Rs.10,000/-
(-) 1/3rd towards personal expenses	-- Rs.3,333/-
Loss of income = 6670 x 12 x 5	-- Rs.4,00,200/-

5. Each of the dependents are entitled to Rs.40,000/- towards loss of love and affection. Since the dependents of the deceased are 2 in number as stated above, the compensation payable towards loss of love and affection is Rs.80,000/- calculated at Rs.40,000/- each for each of the dependents. Therefore, the compensation payable to the claimants towards loss of love and affection is reduced to Rs.80,000/- from Rs.1,00,000/- erroneously awarded by the Tribunal.

6. The Tribunal has erroneously awarded Rs.16,500/- each towards funeral expenses and loss of estate. As per the settled law and in view of the fact that the accident happened in the year 2017, the compensation payable towards funeral expenses and towards loss of estate is Rs.15,000/- each, instead of Rs.16,500/- each awarded by the Tribunal.

7. For the foregoing reasons, the award passed by the Tribunal is re-worked in the following manner:-

Loss of income	- Rs.4,00,200/-
Love and affection	- Rs.80,000/-
Loss of estate	- Rs.15,000/-
Funeral expenses	- Rs.15,000/-
Total	**- Rs.5,10,200/-**

8. In the result, the Civil Miscellaneous Appeal is partly allowed and the impugned award passed by the Tribunal in M.C.O.P.No.1129 of 2017, dated 22.03.2022, is modified by directing the second respondent Insurance Company to deposit a sum of Rs.5,10,200/- together with interest at 7.5% per annum from the date of claim petition till the date of realization, to the credit of M.C.O.P.No.1129 of 2017 on the file of Motor Accident Claims Tribunal, Sessions Judge, Special Court for trial of cases

registered under SC/ST (POA) Act, Namakkal, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said sum along with accrued interest therein through RTGS/NEFT transfer to the bank account of the claimants as apportioned by the Tribunal. No Costs.

25.07.2024

Index: yes/no
Neutral citation: yes/no
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To

Motor Accident Claims Tribunal,
Sessions Judge,
Special Court for trial of cases
registered under SC/ST (POA) Act,
Namakkal.

ABDUL QUDDHOSE,J.

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