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C.M.A.No.2789 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.2789 of 2022

1. Samalammal
2. Karthikeyan
3. Kavitha

... Appellants

Vs.

1. V.Mohan
2. The Branch Manager,
Chola M/s.General Insurance Co., Ltd.,
TP Claims (Legal) Department , Shaw Wallace Building,
No.154, 1st Floor, Thambu Chetty Street,
Chennai 1.

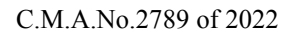
... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 22.04.2022 made in M.A.C.T.O.P.No.81/2019 on the file of the Motor Accident Claims Tribunal and III Additional District Judge, Vellore @ Tirupattur.

For Appellants : Mr.F.Terry Chella Raja

For R1 : Ex parte

For R2 : Mrs.R.Sree Vidhya



This Civil Miscellaneous Appeal has been filed by the appellants/claimants, challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal in M.A.C.T.O.P.No.81 of 2019 of 2016 dated 22.04.2022.

2. On 01.07.2018 at about 3.30 p.m., when the deceased namely Murugesan, who is the first appellant's husband was walking on the road, he was hit by a Maxi Car bearing Reg.No.TN 23 BJ 4945, which was driven by its driver while suddenly reversing the van without horn, by which, the rear wheel of the van ran over the body of said Murugesan and he had succumbed to death. Hence, the appellants/claimants being wife, son and daughter of the deceased made a claim petition before the Tribunal seeking a sum Rs.30,00,000/- as compensation.

3. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.5,23,360/-. Being not satisfied with



C.M.A.No.2789 of 2022

the same, the appellants/claimants have preferred the present appeal.

WEB COPY

4. The learned counsel for the appellants/claimants would submit that at the time of accident, the deceased was aged about 74 years, who retired as a Driver in Tamil Nadu Electricity Board, Chennai, and was drawing a pension of Rs.22,666/- per month, which is not disputed by the respondents before the Tribunal. After the demise of said Murugesan, the first appellant, the wife of the deceased was receiving a sum of Rs.11,333/- per month as family pension. Further, he submitted that the family pension which was accrued out of employment when the deceased was working with the employer, whatever the deceased was earning at that point of time, after his demise, now his right has been accrued in favour of the first appellant/wife of the deceased . However, the Tribunal has wrongly deducted 1/3rd towards his personal expenses. Apart from that, an additional sum of Rs.5,000/- per month was being received by the deceased as honorarium as the President of the Viringipuram, Kulala Community. Hence, the learned requested this Court to consider the income accrued through Kulala Community and seeks appropriate enhancement in favour of the appellants.



C.M.A.No.2789 of 2022

WEB COPY

5. The learned counsel for the second respondent/Insurance Company submitted that, the deceased was a retired Driver worked in Tamil Nadu Electricity Board and he was getting pension of Rs.22,666/- and after his demise, the first appellant being the wife of the deceased, has been receiving a sum of Rs.11,333/- as a family pension and the Tribunal has deducted 1/3rd towards his personal expenses. Hence, she contended that the Tribunal has rightly deducted and awarded the compensation, which does not warrant any interference of this Court. Further, the amount awarded under the other conventional heads, is just and reasonable, and the same may be confirmed by this Court.

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

7. On perusal of the record, it appears that after the demise of the



C.M.A.No.2789 of 2022

deceased Murugesan, the first appellant/wife of the deceased has been receiving a sum of Rs.11,333/- as family pension. No doubt, after the death of the victim, a right would accrue in favour of the widow to receive half of the pension amount which her husband used to receive during his lifetime towards family pension as a condition of service which her husband rendered to his employer during the tenure of his employment. During his life time after retirement, the deceased was receiving full pension. The Tribunal has considered these aspects and rightly deducted 50% of the amount towards his personal expenses. Hence, this Court does not find any error in the compensation awarded by the Tribunal under the head “loss of income” and the same stands confirmed. However, this Court finds that the Tribunal has failed to award any amount under the heads, viz., “transportation” and “loss of love and affection”. Hence, this Court is inclined to award a sum of Rs.10,000/- towards “transportation” to the first appellant/wife of the deceased and a sum of Rs.20,000/- each to the appellants 2 and 3.

8. Insofar as the compensation awarded by the Tribunal under other heads are concerned, this Court finds that the same are just and



C.M.A.No.2789 of 2022

proper and the same are hereby confirmed. Thus, the total compensation payable to the claimants under various Heads is modified as hereunder:-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of income	4,53,360/-	4,53,360/-
Funeral expenses	15,000/-	15,000/-
Loss of estate	15,000/-	15,000/-
Loss of consortium	40,000/-	40,000/-
Transportation (to wife)	Nil	10,000/-
Loss of love and affection (to the appellants 2 & 3)	Nil	40,000/-
Total	5,23,360/-	5,73,360/-

9. Accordingly, the Appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.5,23,360/-** to **Rs.5,73,360/-**. The second respondent/Insurance Company is directed to deposit the said amount to the credit of M.A.C.T.O.P.No.81 of 2019 along with interest at the rate of 7.5% per 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



C.M.A.No.2789 of 2022

WEB COPY

deposited, within a period of six weeks from the date of receipt of a copy of this judgment. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the bank account of the claimant, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimant or application for withdrawal from the claimants, whichever is earlier. The appellants/claimants are directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee has been produced by the claimant. No costs.

05.03.2024

Index : Yes / No

NCC : Yes / No

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Note: Issue order copy on 29.04.2024.

To

1. The Motor Accident Claims Tribunal,
III Additional District Judge,
Vellore @ Tirupattur.

2. The Section Officer,



C.M.A.No.2789 of 2022

V.R. Section,
High Court, Madras.

Krishnan Ramasamy,J.,

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C.M.A.No.2789 of 2022