



WEB COPY



C.M.A.No.2377 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.2377 of 2022

1. Kolanji
2. Veeraragavan
3. Mahalakshmi
4. Deepika
5. Nivetha
6. Minor. Santhiya
Minor represented their mother Subitha ... Appellants

Vs.

1. Vasudevan
2. The New India Assurance Company Ltd.,
TP HUB, Divisional Office,
No.179, Jawaharlal Nehru Salai, Pondicherry. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 as against the fair and decretal award passed by the learned III Additional District and Sessions Judge Cuddalore at Vridhachalam (Motor Accident Claims Tribunal) dated 21.6.22 in MCOP 579/2017.

For Appellants : Mr.S.Udhayakumar
For R1 : No appearance
For R2 : Mr.J.Chandran



C.M.A.No.2377 of 2022

JUDGEMENT

WEB COPY

This Civil Miscellaneous Appeal has been filed, challenging the quantum of compensation awarded by the learned III Additional District and Sessions Judge, Cuddalore, Vridhachalam in M.C.O.P.No.579 of 2017 dated 21.06.2022, the claimants are before this Court.

2. The brief facts are as follows:-

The appellants/petitioners are the wife, son and dependants of the deceased Krishnan. On 14.10.2017, the first petitioner/appellant husband was riding a two wheeler towards west from Chithalur bye-pass road. When he reached near Mettucolony, the first respondent's car bearing Registration No.KL-52-C-2083, belonging to the first respondent and insured with the second respondent/Insurance Company, driven by its driver in a rash and negligent manner, dashed against the deceased, as a result of which, the deceased was thrown away and sustained grievous injuries all over his body and head. Though he was rushed to the Government Hospital, Vridhachalam, however, he died on the way. Thereafter, the appellants have filed a claim petition claiming compensation of Rs.25,00,000/-.



C.M.A.No.2377 of 2022

3. The learned counsel for the appellants submitted that the deceased was owned a Maligai shop and also a retired Village Assistant, was earning Rs.30,000/- per month by way of business and pension. However, the monthly income fixed by the Tribunal at Rs.4,700/-, which is on the lower side and requires to be reconsidered by this Court. Further, the Tribunal have not awarded any amount under the heads of “loss of love and affection”, “loss of estate” and “transportation” and the same maybe awarded. Further, he contented that the notional income cannot be decided merely based on the pension receipt. Accordingly, he prays for appropriate enhancement in favour of the appellants.

4. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, the deceased was 71 years of age at the time of accident, and he was drawing pension. Therefore, the Tribunal have fixed the notional income of deceased at Rs.4,700/-, which is fair and does not require any modification. Accordingly, he prayed the order to be sustained.

5. Heard the learned counsel for the appellants and the learned



C.M.A.No.2377 of 2022

counsel appearing on behalf of the second respondent and perused the materials available on record.

6. The fact and manner of the accident is not disputed by the parties. Therefore, this Court is not dealing with the said aspect. The only grievance of the appellants is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the appellants that though the deceased at the time of accident, was earning a sum of Rs.30,000/- as monthly income, however, without considering the same, the Tribunal had fixed the notional income at Rs.4,700/-. This Court is of the view, the suggestion made by the appellants to re-determine the notional income, is reasonable. Taking note of the fact that the deceased was doing Maligai business and a retired pension and applying the ratio laid down by the Hon'ble Apex Court, this Court feels it appropriate to fix the notional income of the deceased at Rs.8,000/- per month. Deducting $1/4^{\text{th}}$ towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.6,000/- per month and the deceased being aged about 71 years, as evidenced from the records, adopting the multiplier of 5 in the light of the dictum of the Hon'ble Apex Court, the loss of income to the family is arrived at $\text{Rs.6,000/-} \times 12 \times 5 =$



C.M.A.No.2377 of 2022

Rs.3,60,000/-, which is worked out as follows :-

WEB COPY

<i>Loss of Income</i>	<i>Amount in Rs.</i>
Notional income (Per month)	8,000
Less: Personal expenses (1/4 th) (Rs.8,000/- x 1/4) (Per month)	2,000
	6,000
Notional income (per annum) (Rs.6,000/- x 12)	72,000
Multiplier	5
Total	3,60,000

7. A sum of Rs.40,000/- has been granted to the first appellant under the heads of "loss of consortium" and "funeral expenses", stands confirmed. No amount has been granted under the heads of "loss of love and affection", "loss of estate" and "transportation". Therefore, a sum of Rs.40,000/-, Rs.15,000/- and Rs.10,000/- respectively are awarded under the above heads.

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



WEB COPY



C.M.A.No.2377 of 2022

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of Income	2,11,500/-	3,60,000/- (enhanced)
Loss of love and affection	Nil	40,000/-
Loss of consortium	40,000/-	40,000/-
Funeral expenses	15,000	15,000/-
Transportation	Nil	10,000/-
Loss of estate	Nil	15,000/-
Total	2,66,500/-	4,80,000/-

9. Accordingly, the appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from Rs.2,66,500/- to Rs.4,80,000/-. The second respondent/Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.579 of 2017 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 already deposited, if any, 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 respective bank accounts of the first claimant, who is the wife of deceased, by way of RTGS, within a period of three weeks from the deposit



C.M.A.No.2377 of 2022

or from the date of receipt of the Bank details obtained from the claimants or application for withdrawal from the claimant, whichever is later. The appellants/claimants are directed to pay the necessary Court fee for the enhanced compensation amount. 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 claimants. No costs.

05.01.2024

Index : Yes / No
NCC : Yes / No
jd

To

1. The Motor Accident Claims Tribunal,
III Additional District and Session Judge,
Cuddalore, Vridhachalam.
2. The Section Officer,
V.R. Section,
High Court, Madras.



WEB COPY



C.M.A.No.2377 of 2022

Krishnan Ramasamy,J.,

jd

C.M.A.No.2377 of 2022

05.01.2024