



C.M.A.No.2770 of 2022

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 12.02.2024

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The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.2770 of 2022

1. Santha
2. Srinivasan
3. Sudha
4. Suganya

... Appellants

Vs.

1. C.Sekar
2. The Manager,
IFFCO Tokio General Insurance Co. Ltd.,
GSN Arcade, 2nd Floor,
Bye Pass Road, Upstairs ICICI Bank,
Hosur – 635109.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 17.11.2021 made in M.C.O.P.No.965 of 2020, on the file of the Motor Accident Claims Tribunal/Special District Judge, Krishnagiri.

For Appellants : Mr.S.P.Yuaraj
Respondent-1 : No appearance
For Respondent-2 : Mr.N.Anbumurugan



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JUDGEMENT

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

2. On 12.08.2019, when the deceased was travelling as a Pillion Road in a two wheeler, viz., Bajaj Pulser, bearing Regn.No.TN-70-AB-9738, ridden by one Marappa, in Uddanapalli to Hosur Road near Naveen Hotel, a Nano Car, bearing Regn.No.TN-29-AK-8231 driven by the first respondent, came in the opposite direction in a rash and negligent manner and dashed against the said Bajaj Pulser, due to which, the deceased sustained fatal injuries and died on the way to Hospital. Hence, the claimants, being mother, father and sisters of the deceased filed a Claim Petition seeking a sum of Rs.40,00,000/- as compensation.

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-Cum-Owner, the first respondent and hence, directed the second respondent/Insurance Company to pay a compensation of



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Rs.15,10,800/- 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. The break up details of the award passed by the Tribunal under various heads are as follows:-

<i>S.No</i>	<i>Head</i>	<i>Amount granted</i>
1.	Loss of Dependency	Rs. 13,60,800/-
2	Loss of Estate	Rs. 15,000/-
3	Funeral Expenses	Rs. 15,000/-
4	Loss of Consortium	Rs. 1,20,000/-
Total		Rs. 15,10,800/-

4. Aggrieved over the award passed by the Tribunal, the appellants/claimants have filed the present appeal seeking for enhancement of compensation, as stated supra.

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.



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6. Mr.S.P.Yuaraj, the learned counsel appearing for the appellant would submit that Tribunal, while determining the compensation towards 'Loss of Dependency', fixed the notional income of the deceased at Rs.9,000/- which is meager. The learned counsel would submit that at the time of the accident, which occurred in the year 2019, the deceased was aged about 25 years; Self Employed (Vegetable Vendor); earning Rs.30,000/- per month and unmarried leaving behind him his parents and two sisters as dependants, whereas, the Tribunal, in the absence of income proof, fixed the notional monthly income of the deceased only at Rs.9,000/-, which has resulted in awarding inadequate compensation under the said head. The learned counsel further relied on the law down by the Hon'ble Supreme Court in the **Syed Sadiq Vs. United India Insurance Company**, reported in **2014 (1) TNMAC 459 (SC)**, wherein, the notional monthly income for a vegetable vendor who sustained injuries in the accident occurred in the year 2008 was fixed at Rs.6,500/-, in the absence of any proof for income, and hence, the learned counsel prayed that some reasonable amount may be fixed as notional monthly income of the deceased, as in the present case also, the deceased was a Vegetable Vendor,



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who died due to the accident occurred in the year 2019. The learned counsel also fairly admitted that the award of compensation by the Tribunal under the heads are just and fair and therefore, submitted that the same may be confirmed.

7. Despite service of notice on the first respondent, owner of the offending Vehicle, he has not appeared either in person or through the counsel duly instructed.

8. Mr.N.Anbumurugan, learned counsel for the second respondent/Insurance Company submitted that the award passed by the Tribunal is just and fair and requires no interference. However, he would submit that in the event, the Court is inclined to enhance the notional monthly income of the deceased, the same may be enhanced not exceeding Rs.12,000/-. Further, it is contended by the learned counsel that the Tribunal, while awarding compensation towards Loss of Consortium to the parents of the deceased at a sum of Rs.80,000/- has also awarded a sum of Rs.20,000/- one of the sisters of the deceased, who has already been got



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married, which is not fair and prayed to set aside the same.

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9. I have given due considerations to the submission made by the learned counsel for the appellants and the learned counsel for the second respondent/Insurance Company and perused the materials available on record.

10. Thus, taking into consideration of the submissions made by both sides and in the light of the ratio decidendi laid down by the Hon'ble Supreme Court, in **Syed Sadiq's case (cited supra)** wherein, the Honourable Supreme Court fixed the notional monthly income for a vegetable vendor, who sustained injuries in the accident occurred in the year 2008 at Rs.6,500/- and this Court, following the said decision, has, in fact, disposed of number of cases, by fixing the reasonable amount towards the notional income of the deceased on case to case basis depending on the nature of avocation of the deceased, is of the view, it would be appropriate to fix a sum of Rs.14,000/- as notional monthly income of the deceased, as in the present case also, the deceased was a Self Employed (Vegetable



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Vendor) aged about 25 years at the time of the accident, i.e. in the year 2019; Thus, by fixing the notional monthly income of the deceased at Rs.14,000/-; adding 40% towards future prospects; deducting 50% towards his personal expenses (since the deceased was a Bachelor) and by applying the right multiplier of '18' (since the deceased was aged 25 years), the compensation towards Loss of Dependency is calculated as under:-

Notional Monthly income + 40% future prospects
(i.e. Rs.14,000/- + Rs.5,600) = Rs.19,600/-

(Deduction of 1/2 x towards personal expenses)	(Multiplier of '18')
19,600/- x 1/2 x 12	x 18
	= Rs.21,16,800/-

10.1 Consequently, the sum of Rs.13,60,800/- awarded by the Tribunal under the head of 'Loss of Dependency' is hereby modified and enhanced to **Rs.21,16,800/-**.

10.2 Insofar as the contention putforth by the learned counsel for the second respondent/Insurance Company that the compensation awarded



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by the Tribunal to the siblings of the deceased as not fair on the ground that they got married is concerned, this Court does not find any infirmity over the said award of the Tribunal, for the reason that sibling's love and affection over one another is not a momentary one to get ceased after marriage, but an unconditional love, which is eternal one that would last till last breath. Accordingly, the compensation awarded by the Tribunal under the head 'Loss of Love and Affection' at Rs.40,000/- stands confirmed.

10.3. Similarly, the compensation awarded by the Tribunal under the remaining two heads, viz., Funeral Expenses and Loss of Estate at Rs.15,000/- each also stands confirmed, as this Court finds the same to be just and fair.

11. Thus, the total compensation payable to the appellants/claimants under various Heads is as hereunder:-



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<i>S.No</i>	<i>Head</i>	<i>Amount granted</i>
1.	Loss of Dependency	Rs.21,16,800/-
2	Filial Consortium(father & mother)	Rs. 80,000/-
3	Loss of Love and Affection to Siblings (sisters)	Rs. 40,000/-
4	Funeral Expenses	Rs. 15,000/-
5	Loss of Estate	Rs. 15,000/-
Total		Rs.22,66,800/-

11.1 Consequently, the total compensation amount of **Rs.15,10,800/-** awarded by the Tribunal is hereby modified and enhanced to **Rs.22,66,800/-**, 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 mother of the deceased is entitled to a sum of **Rs.10,66,800/-** together with proportionate interest ; second appellant, father of the deceased is entitled to **Rs.8,00,000/-** and third and fourth appellants, viz., sisters of the deceased is entitled to a sum of **Rs.2,00,000/-** each together with proportionate interest.



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12. 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 equally 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 the entire award amount, less the amount already withdrawn, if any, by making necessary application before the Tribunal.



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iv) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any.

v) There shall be no order as to costs.

12.02.2024

To

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



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Krishnan Ramasamy,J.,
sd

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