



C.M.A.No.679 of 2023

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 07 .03.2024

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The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.679 of 2023

1. Karuppasamy
2. Priya
3. Shanmugapriya
4. Manikandan

... Appellants

Vs.

1. M.Kannan
2. The Branch Manager,
M/s.New India Assurance Co. Ltd.,
Opp. New Bus Stand, Perambalur.
3. S.Suresh
4. The Divisional Manager,
M/s. Oriental Insurance Co. Ltd.,
No.4, 2nd Floor, Bharathidasan Road,
Cantonment, Trichy-1.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 31.08.2021 made in M.C.O.P.No.685 of 2017, on the file of the Motor Accident Claims Tribunal/Sessions Judge, Mahila Court, Perambalur.



C.M.A.No.679 of 2023

For Appellant : Mr.T.Gobinath

For Respondent-1 : Dispensed with

For Respondent-2 : Mr.S.P.Chockalingam

Respondent-3 : Notice not necessary

For Respondent-4 : Mr.M.J. Vijayaraghavan

JUDGEMENT

This instant Appeal is preferred against the award passed by the Motor Accident Claims Tribunal (hereinafter, referred to as the 'Tribunal') in M.C.O.P.No.685 of 2017 dated 31.08.2021.

2. On 03.09.2017, at about 5.10 a.m., when the deceased was travelling in a Maxi Cab Van, bearing Regn No.TN-30-AA-6309, owned by the first respondent, insured with the second respondent, driven by its driver and when the said vehicle was proceeding on Udumalai to Pollachi Main Road and was nearing Ragalpavi Pirivu Road, Udumalpet, at that time, a Omni Bus, bearing Regn.No.PY-01-CF-9399, belonging to the third respondent, insured with the fourth respondent, driven by its driver came in



C.M.A.No.679 of 2023

the opposite direction in a rash and negligent manner and dashed against Maxi Cab Van. In the said accident, the deceased Kamatchi @ Valarmathi sustained fatal injuries and died on the spot. Hence, the husband, two daughters and son of the deceased filed a Petition claiming a sum of Rs.30,00,000/- as compensation.

3. The Tribunal, after considering the oral and documentary evidence held that the accident occurred due to the negligent driving of the Maxi Cab Van, belonging to the first respondent, and hence, directed the insurer/second respondent to pay the claimants a compensation of Rs.11,66,875/- with interest at 7.5% p.a. from the date of petition till the date of deposit. The break up details of the compensation amount are as follows:-

<i>Sl</i>	<i>Head</i>	<i>Award</i>
1	Loss of Dependency	Rs.10,96,875/-
2	Consortium	Rs.40,000/-
3	Loss of Estate	Rs.15,000/-
4	Funeral Expenses	Rs.15,000/-
	Tota	Rs.11,66,875/-
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C.M.A.No.679 of 2023

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

5. Since the Appeal is preferred only against the quantum of compensation passed by the Tribunal, this Court is not inclined to traverse into the other aspects of the award.

6. The learned counsel appearing for the appellants/claimants would submit that the Tribunal, while determining compensation towards Loss of Dependency, has taken the notional monthly income of the deceased only at Rs.6,500/- which is meager and the learned counsel relied on a decision rendered by the Hon'ble Division Bench of this Court in **Andal and others Vs. Avivan Kannan and another**, reported in **2019(1) TN Mac 54 (DB)**. and therefore, requested to fix at least a sum of Rs.11,000/- as notional monthly income of the deceased. The learned counsel further submitted that though the Tribunal awarded compensation towards Consortium for the spouse, however, failed to award any compensation towards Love and



C.M.A.No.679 of 2023

Affection for the son and daughters of the deceased, and therefore, prayed for granting the same.

7. On the other hand, learned counsel for the second respondent/Insurance Company would submit that the award passed by the Tribunal under the head, 'Loss of Dependency' at Rs.10,96,875/- by taking the notional income of the deceased at Rs.6,500/- in the absence of income proof produced by the claimants is just and fair and requires no interference. However, the learned counsel submitted if this Court proceeds to re-determine the compensation by re-fixing the notional monthly income of the deceased, the same shall not exceed Rs.10,000/-p.m. As regards the failure of the Tribunal in not awarding compensation towards Loss of Love and Affection is concerned, the learned counsel fairly submitted that any just and reasonable compensation may be awarded.

8. Heard the learned counsel appearing for the appellants/claimants and the learned counsel for the respondents 2 and 4



C.M.A.No.679 of 2023

and perused the materials available on record.

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9. There is no dispute with regard to the factum of the accident. The dispute is with regard to the fixation of notional monthly income by the Tribunal at Rs.6,500/- for the purpose of determining compensation under the head, 'Loss of Dependency', which according to the learned counsel appearing for the appellants/claimants is low, and in support of his contention, the learned counsel relied on a decision rendered by the Hon'ble Division Bench of this Court in **Andal and others Vs. Avivan Kannan and another**, reported in **2019(1) TN Mac 54 (DB)**. Secondly, it is contended by the learned counsel for the appellants that the Tribunal failed to award any compensation towards Loss of Love and Affection to the son and daughters of the deceased. Thus, on the aforesaid two aspects, the learned counsel sought for interference of this Court.

i) Loss of Dependency :-

10. Though the learned counsel appearing for the appellants relied



C.M.A.No.679 of 2023

on the decision rendered by the Hon'ble Division Bench of this Court in **Andal's case (cited supra)**, wherein, the notional monthly income of the deceased, who was aged about 48 years was taken at Rs.13,750/-, this Court, taking into consideration of the age, occupation and year of the accident, is inclined to fix a sum of Rs.11,000/- as notional monthly income of the deceased.

10.1 Thus, by fixing the notional monthly income of the deceased at Rs.11,000/-; adding 25% towards future prospects; deducting 1/4 towards personal expenses (since the dependents are four in numbers) and by applying multiplier of '15' (since the deceased was aged 40 years), the compensation towards Loss of Dependency is calculated as under:-

Notional Monthly income + 25% future prospects
(i.e. Rs.11,000/- + Rs.2,750) = Rs.13,750/-

(Deduction of 3/4 x (Multiplier of '15')
towards personal expenses)
 $13,750/- \times \frac{3}{4} \times 12 \times 15 = \text{Rs.18,56,250/-}$

10.2 Consequently, the sum of Rs.10,96,875/- awarded by the Tribunal under the head of 'Loss of Dependency' is hereby modified and



C.M.A.No.679 of 2023

enhanced to **Rs.18,56,250/-**.

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ii) Loss of Love and Affection :-

11) As rightly pointed out by the learned counsel for the appellants, the Tribunal though awarded a sum of Rs.40,000/- towards Loss of Consortium to the first appellant, husband of the deceased, however, failed to award any compensation to the appellants 2 to 4, who are son and daughters of the deceased. Hence, this Court is inclined to award a sum of Rs.40,000/- each to the appellants under the said head.

12 Insofar 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.

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

<i>S.No</i>	<i>Head</i>	<i>Amount granted</i>
1.	Loss of Dependency	Rs.18,56,250/-



<i>S.No</i>	<i>Head</i>	<i>Amount granted</i>
2.	Loss of Consortium	Rs. 40,000/-
3.	Loss of Love and Affection	Rs. 1,20,000/-
4	Funeral Expenses	Rs. 15,000/-
5	Loss of Estate	Rs. 15,000/-
Total		Rs. 20,46,250/-

14. Consequently, the total compensation amount of Rs.11,66,875/- awarded by the Tribunal is hereby modified and enhanced to **Rs.20,46,250/-** 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 husband of the deceased is entitled to a sum of **Rs.9,00,000/-** together with proportionate interest and the appellants 2 & 3 daughters of the deceased are entitled to a sum of **Rs.4,00,000 /-** each together with proportionate interest and fourth appellant, son of the deceased is entitled to a sum of Rs.3,46,250/- together with proportionate interest.

15. In the result, this Civil Miscellaneous Appeal filed by the



C.M.A.No.679 of 2023

appellants/claimants is partly allowed on the following terms:-

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(i) The second respondent, New India Assurance Co. Ltd., 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 Assurance 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.

(iv) It is made clear that the appellants/claimants are not entitled to



C.M.A.No.679 of 2023

the interest for the delay period, if any, in preferring the appeal.

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

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

07.03.2024

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To

The Sessions Judge, Mahila Court,
Motor Accident Claims Tribunal, Perambalur



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C.M.A.No.679 of 2023

Krishnan Ramasamy,J.,
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C.M.A.No.679 of 2023

07.03.2024