



WEB COPY



C.M.A.No.407 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.407 of 2023

1. Ayyappan
2. Sumathi

... Appellants

Vs.

1. Mariappan
2. United India Insurance Company Limited,
Office situated at 3E, Balavinayakar Koil Street,
Thoothukkudi.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 for enhancement of compensation in the Judgment and Decree dated 30.10.2017 and made in M.C.O.P.No.382 of 2016 on the file of MACT/IV-Additional District Court, Erode.

For Appellants : Mr.M.Logesh

For R2 : Mrs.E.Malar

JUDGEMENT

This Civil Miscellaneous Appeal has been filed, challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, IV-Additional District Court, Erode in M.C.O.P.No.382 of 2016, dated 30.10.2017.



C.M.A.No.407 of 2023

2. On 28.02.2016 at about 9.30 p.m., when the deceased was riding a motorcycle viz., Hero Honda Splendor bearing Reg.No.TN86/A5674, towards Erode, the first respondent's vehicle viz., lorry bearing Reg.No.TN 23/AK6338, which came from the same direction, driven by its driver in a rash and negligent manner and dashed against the motorcycle, due to which, the deceased sustained grievous injuries all over his body and died. Hence, the appellants, being the parents of the deceased, filed a Claim Petition seeking a sum of Rs. 20,00,000/- as compensation.

3. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.7,03,000/- towards compensation to the appellants. Being not satisfied with the same, the appellants have filed the present appeal.

4. The learned counsel for the appellants would submit that, at the time of accident, the deceased was aged about 21 years, was studying 2nd year of B.Com and working as a Part-time Auto driver and earning a sum of Rs.15,000/- per month. Without considering the same, the Tribunal had erroneously fixed the notional monthly income of the deceased at Rs.6,000/-, which is very meager, and the same may be re-considered by this Court. Further, he relied upon the decision in the case of *Syed Sadiq Vs. United India Insurance Company*,



C.M.A.No.407 of 2023

reported in **2014 (1) TNMAC 459 (SC)**, wherein the Apex Court fixed the notional monthly income even for a vegetable vendor at Rs.6,500/-, who sustained injuries in the accident occurred in the year 2008, by applying the multiplier based on cost inflation index, in the absence of any proof for income, it would come more than a sum of Rs.12,000/-. Hence, he prays that a sum of Rs.12,500/- may be fixed as notional income of the deceased, since the accident occurred in the year 2016. Further, he submitted that as per the law laid down by the Hon'ble Apex Court in the case of **National Insurance Company Limited Vs. Pranay sethi and others** reported in **2017 (16) Supreme Court Cases 680**, the Tribunal has not awarded any amount towards “future prospects” of the deceased, and the same may be awarded by this Court. Further, he fairly admitted that, the Tribunal awarded a sum of Rs.25,000/- towards “funeral expenses”, which is excessive, and the same may be reduced to Rs.15,000/-. Accordingly, he prays for appropriate enhancement in favour of the appellants.

5. The learned counsel for the second respondent/Insurance Company would fairly submit that any fair amount towards notional income may be re-determined by this Court.



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

7. 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. It is claimed by the appellants that though the deceased was aged about 21 years, and had earned a sum of Rs.15,000/- per month as a part-time Auto driver, without taking into account the educational qualification of the deceased, the Tribunal had fixed the notional income of the deceased at a sum of Rs.6,000/-, which is on the lower side. In view of the above and applying the ratio laid down by the Apex Court in *Syed Sadiq's* case (cited supra), and on relying upon the judgment of Hon'ble Division Bench of this Court in the case of *Andal vs. Avinav Kannan and another reported in 2019 (1) TNMAC 54, (Madras)*, this Court is inclined to re-determine the notional income of the deceased at Rs.12,500/- per month, which is just and reasonable. Thus, by fixing the notional income of the deceased at Rs.12,500/-; adding future prospects at 40%, as has been held by the Constitution Bench of the Apex Court, the total income per month is quantified at Rs.17,500/-; deducting 50% towards his



C.M.A.No.407 of 2023

personal and living expenses of the deceased (as the deceased was a bachelor at the time of the accident); and adopting the multiplier of '18' (since the deceased was aged about 21 years), the compensation towards “Loss of Dependency” is calculated as under:-

<i>Loss of Income</i>	<i>Amount in Rs.</i>
Notional income (Per month)	12,500
Add: Future Prospects (Rs.12,500 x 40%) (Per month)	5,000
	17,500
Less: Personal expenses (50%) (Rs.17,500/- x 1/2) (Per month)	8,750
Notional income (per annum) (Rs.8,750/- x 12)	1,05,000
Multiplier	18
Total	18,90,000/-

8. Consequently, the sum of **Rs.6,48,000/-** awarded by the Tribunal under the head of “Loss of Dependency” is hereby modified and enhanced to **Rs.18,90,000/-**. Further, this Court finds that the Tribunal has failed to award any compensation under the head of “loss of estate”. Hence, this Court is inclined to award a sum of Rs.15,000/- towards “loss of estate”.

9. The Tribunal has awarded a sum of **Rs.25,000/-** towards “funeral expenses”, which is on the higher side, and the same is reduced to a sum of **Rs.15,000/-**. A sum of **Rs.20,000/-** awarded by the Tribunal under the head of



C.M.A.No.407 of 2023

“loss of love and affection”, which appears to be low, and this Court is inclined to award a sum of **Rs.80,000/-**.

10. Insofar as the compensation awarded by the Tribunal under the head “transportation” is concerned, this Court finds the same to be just and proper and is hereby confirmed.

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

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Compensation towards loss of dependency	6,48,000/-	18,90,000/- (enhanced)
Funeral expenses	25,000/-	15,000/-
Loss of Estate	Nil	15,000/-
Loss of love and affection	20,000/-	80,000/-
Transportation	10,000/-	10,000/-
Total	7,03,000/-	20,10,000/-

12. Consequently, the total compensation amount of Rs.7,03,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.20,10,000/-, which shall carry interest at the rate of **7.5%** per annum from the date of claim petition



C.M.A.No.407 of 2023

till the date of deposit, out of which, first appellant, the father of the deceased is entitled to a sum of **Rs.10,05,000/-** together with proportionate interest; second appellant, the mother of the deceased is entitled to a sum of **Rs. 10,05,000/-**.

13. 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 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 second respondent/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



C.M.A.No.407 of 2023

application before the Tribunal.

WEB COPY

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.

15.02.2024

Index : Yes / No

NCC : Yes / No

jd

To

1. The Motor Accident Claims Tribunal,
Additional District Judge, Erode.

2. The Section Officer,
V.R. Section,
High Court, Madras.



WEB COPY



C.M.A.No.407 of 2023

Krishnan Ramasamy,J.,

jd

C.M.A.No.407 of 2023

15.02.2024