



C.M.A(MD)No.658 of 2022

WEB COP BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.658 of 2022

- 1.Asuntha Mary Mariya Snegam
- 2.Alby Grace
- 3.Emanuel

... Appellants

Vs.

- 1.Mariappan
- 2.The New India Assurance Company Limited,
Through its Branch manager,
Krishna Enclave,
No.75E/3, 2nd Floor,
Salai Road, Trichy – 620 018.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the award, dated 29.04.2021, made in M.C.O.P.No. 1762 of 2018, on the file of the by the Motor Accident Claims Tribunal (Special Sub-Court dealing with MCOP Cases), Tirunelveli.

For Appellant : Mr.T.Selvakumar
For R2 : Mr.C.Karthi

JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimants for enhancing the compensation.



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2. It is a case of fatal. The only point that was canvassed is that the deceased was self-employed doing manufacture of sports materials. Hence, the claimant is praying to fix the salary as Rs.8,000/-. It is seen that the Tribunal has fixed the monthly income as Rs.3,000/-. The respondents vehemently opposed the said plea stating that the deceased was 73 years old. Therefore, there is no question of fixing minimum monthly income. Moreover, the occupation that is stated by the claimant is vague. Therefore, the respondents objected for increasing the salary of the deceased.

3. After considering the rival submissions and on perusing the documents, it is seen that the claimant has stated only the deceased was carrying on business of producing sports materials. Absolutely, there is no other material to state what kind of sports material was produced and there is no evidence to show the income that is generated through the business. The claimant has not filed any Income Tax Returns. In short, there is no absolute evidence to prove the same.

4. On perusing the salary that is fixed by the Tribunal it is seen that the salary is fixed as Rs.3000/-. Any person below the age of 60, even if it is not proved that he is employed elsewhere, the minimum notional salary is fixed as Rs.



8,000/-. In the present case, since the deceased is more than 70 years old Rs. 8,000/- cannot be fixed. At the same breadth, Rs.3,000/- is too low and the same also cannot be fixed. Therefore, to meet the ends of justice, this Court is fixing the salary as Rs.5,500/-. For loss of consortium, the Tribunal has granted Rs. 40,000/- for the first claimant alone. However, claimants 2 and 3 are the son and daughter of the deceased, so together they are entitled to Rs.40,000/- for loss of love and affection. With this modification, the Tribunal order is partially confirmed. The modified compensation is as under:

i.	Monthly income of the deceased	Rs.5,500/-
ii.	1/3 rd of the income deducted as personal expenses of the deceased	Rs.5,500/- (-) Rs.1,833/-
Total		= Rs.3,667/-

Sl.No.	Heads	Modified award granted by this Court	Award granted by the Tribunal
1.	Compensation after multiplier of 5 is applied (Rs.3,667/- * 5 * 12)	Rs.2,20,020/- (enhanced)	Rs.1,20,000/-
2.	Loss of Consortium to the 1 st claimant	Rs.40,000/- (confirmed)	Rs.40,000/-
3.	Loss of Love and affection to claimants 2 and 3 (Rs.20,000/- * 2)	Rs.40,000/-	Not granted by Tribunal
4.	Loss of Estate	Rs.15,000/- (confirmed)	Rs.15,000/-
5.	Funeral Expenses	Rs.15,000/- (confirmed)	Rs.15,000/-
	Total	Rs.3,30,020/- (enhanced)	Rs.1,90,000/-



C.M.A(MD)No.658 of 2022

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5.The 2nd respondent Insurance Company shall deposit Rs.3,30,020/- with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their shares (the claimants 1 to 3 are entitled to Rs.2,70,020/-, Rs.30,000/- and Rs.30,000/- respectively) with proportionate accrued interests and costs, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal.

6. With the above said directions, the Civil Miscellaneous Appeal is partly allowed. No costs.

31.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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C.M.A(MD)No.658 of 2022

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- To
- 1.Motor Accident Claims Tribunal /
(Special Sub-Court dealing with MCOP Cases),
Tirunelveli.
 - 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.658 of 2022

S.SRIMATHY, J.

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C.M.A(MD)No.658 of 2022

31.01.2024