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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No. 258 of 2023

1. Kavitha

2. Bhuvana

3. Minor Arthi

4. Minor Anandh

5. Thavamani [Died]

... Appellants

*[Minor Appellants 3 & 4 represented through their mother and next guardian
1st appellant]*

Vs.

1. Geetha

2. The New India Assurance Company Limited,
Through its Branch Manager,
Nehru Street,
Tindivanam 604 001.

3. Karikolrajan

4. The New India Assurance Company Limited,
Through its Branch Manager,
No.584, Virudhunagar Road,
Thiruthangal.

... Respondents

*[Memo, dated 31.08.2023 presented before this Court is recorded. Notice to
the respondents 1 to 3 is dispensed with, as they set ex-parte before the
Tribunal, vide Court Order, dated 31.08.2023.]*



PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree made in M.C.O.P.No.96 of 2018 on the file of the Motor Accident Claims Tribunal [I Additional District Court], Tirunelveli, dated 27.01.2021.

For Appellant : Mr.J.Selvakumaran

R-1 & R-3 : Exparte

For R-2 & R-4 : Mr.J.S.Murali

JUDGEMENT

The claimants have preferred this appeal for enhancing the award amount passed in M.C.O.P.No.96 of 2018 on the file of the Motor Accident Claims Tribunal [I Additional District Court], Tirunelveli, dated 27.01.2021.

2. It is a case of fatal. The contention of the claimants is that the deceased was having sole proprietor concern, wherein he was engaged in collecting goods and distributing the same to each and every shop. The deceased was the sole breadwinner. The deceased while travelling in the van along with the driver had met with the accident.

3. It is seen that the Tribunal has referred the income and expenditure, balance sheet and other documents filed and marked by the claimants had come to the conclusion the monthly income of the deceased



would be Rs.25,000/-, But the contention of the claimants is that the same is on the lower side. This Court randomly perused the statement of income and expenditure, wherein it is seen for the month of November 2009 and November 2010, there was transaction for more than one lakh for the said months. Therefore, appropriate fixation of notional monthly income ought to be Rs. 27,500/- after deducting expenses in running the business.

4. With this modification, the other calculation and award granted by the Tribunal under the other heads are hereby confirmed.

5. The monthly salary of the deceased is increasing from Rs.25,000/-to Rs.27,500/-. Since at the time of accident the deceased was aged about 42 years, 25% is added up for calculating future prospectus. Therefore, the monthly income of the deceased is working out Rs.33,750/- [Rs.27,500 + Rs.6,875 = Rs.34,375/-]. After deducting 1/4 towards personal expenses of the deceased i.e., Rs.34,375 – Rs.8,594 = Rs.25,781/-. The multiplier is taken into account as 14. Therefore, the total loss of income is arrived as Rs.43,31,208/-.

6. Accordingly, the claimants are entitled for compensation as follows:



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S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	For Loss of Income	Rs.39,37,416/-	Rs.43,31,208/-	Enhanced
2.	For Loss of Consortium	Rs.2,00,000/-	Rs. 2,00,000/-	confirmed
3.	For Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	confirmed
4.	For Transport Expenses	Rs. 5,000/-	Rs. 5,000/-	Enhanced
Total		Rs.41,57,416/-	Rs.45,51,208/-	

From the compensation of Rs.41,57,416/-granted by the Tribunal, this Court is enhancing a sum of Rs.45,51,208/-, as compensation.

7. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

The claimants are entitled to a sum of Rs.45,51,208/-as compensation with interest at 7.5% p.a., from the date of claim petition till the date of realization along with costs. The 4th respondent/Insurance Company is directed to deposit the balance amount, 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 being made, the claimants 1 & 2 are permitted to withdraw their share as apportioned by the Tribunal, as per Law. The share of the minor claimants shall be deposited in anyone of the Nationalized bank till they attains majority.

The interest accrued on the share of the minor claimants shall be paid to the



1st claimant, once in three months. The claimants are directed to pay the deficit

Court fee for the enhanced compensation.

8. With these observations, this Civil Miscellaneous Appeal is partly allowed. No Costs.

08.02.2024
[1/2]

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

To

1. The Motor Accident Claims Tribunal/
[I Additional District Court],
Tirunelveli.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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**Order made in
C.M.A(MD)No.258 of 2023
[1/2]**

08.02.2024