



C.M.A(MD)No.295 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.295 of 2021

Mariammal

... Appellant

Vs.

1.Lalitha

2.Samuthirapandi

3.Veeralakshmi

4.The Branch Manager,
Cholamandalam MS General Insurance
Company Limited,
Dare House 2nd Floor,
N.S.C.Bose Road,
Chennai – 600 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree, dated 18.10.2019, made in M.C.O.P.No.121 of 2014, on the file of the Motor Accident Claims Tribunal / Additional Sub Court, Tenkasi.

For Appellant	: Mr.T.Selvakumaran
For R1 & R2	: Mr.Srinivasaraghavan
For R4	: M/s.K.R.Shivashankari
R3	: Ex-parte



C.M.A(MD)No.295 of 2021

WEB COPY

JUDGMENT

The wife of the deceased has preferred this Civil Miscellaneous Appeal.

2. It is a case of fatal. The only point that was raised by the appellant is that the deceased was a Driver and has produced driving license to this effect. In spite of the same, the Tribunal has fixed the notional income as Rs.8,000/-. The contention of the claimants is that the Tribunal ought to have fixed the notional income as Rs.12,000/-.

3. This claim was vehemently opposed by the Insurance Company and submitted that as per the case of *Syed Sadiq Vs. United India Insurance Co. Ltd.*, reported in **2014 TN MAC 459**, the notional income ought to be fixed as Rs. 6,500/- for the accident happened in the year 2008. In the present case the accident took place in the year 2012, hence fixing Rs.12,000/- will be on a higher side. The claimants are wife and parents of the deceased and the parents have not filed any appeal for enhancement. Further the wife after the death of the husband has remarried and therefore, she is not entitled to compensation. The said contention cannot be accepted, since the fixation of compensation is for the death



of a person who was the bread winner of the family and subsequent remarriage will not disentitle the wife from compensation.

4. In order to give a fair and just compensation, this Court is fixing the notional salary of the deceased as Rs.10,500/- with future prospects. The compensation granted under the other heads are confirmed. The Tribunal has granted pay and recovery and the same is confirmed. The modified award amount granted by this Court is as under:

i.	Monthly income of the deceased	Rs.10,500/-
ii.	Future Prospects (40%)	Rs.4,200/-
Total		Rs.14,700/-
Deduction of 1/3 rd of income towards personal expenses		- Rs.4,900/-
After deduction		Rs.9,800/-

Sl. No.	Heads	Award granted by Tribunal	Award granted by this Court	Enhanced / Confirmed / Reduced
1.	Loss of Income	Rs.15,23,880/- (Rs.7470*12*17)	Rs.19,99,200/- (Rs.9800*12*17)	Enhanced
2.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Loss of Consortium	Rs.40,000/-	Rs.40,000/-	Confirmed
5.	Loss of Love and Affection	Rs.80,000/-	Rs.80,000/-	Confirmed
	Total	Rs.16,73,880/-	Rs.21,49,200/-	Enhanced



C.M.A(MD)No.295 of 2021

WEB COPY

Thus, the total compensation granted by the Tribunal to the tune of Rs.16,73,880/- is enhanced to Rs.21,49,200/- by this Court.

5.The 4th respondent Insurance Company is directed to deposit Rs. 21,49,200/- (Rupees Twenty One Lakh Forty Nine Thousand Two Hundred only) 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 six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their shares (each claimant is entitled to 1/3rd share) with proportionate accrued interests and costs, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. The 4th respondent Insurance Company is entitled to recover the same from the owner of the vehicle / 3rd respondent herein, by way of filing Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in **2004 (2) CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)**. Since this Court is enhancing the compensation, the claimants are liable to pay the balance Court fee.



C.M.A(MD)No.295 of 2021

WEB COPY

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

18.03.2024

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

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To

- 1.Motor Accident Claims Tribunal /
Additional Sub Court, Tenkasi.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.295 of 2021

S.SRIMATHY, J.

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C.M.A(MD)No.295 of 2021

18.03.2024