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C.M.A(MD)No.1084 of 2017

**BEFORE THE MADURAI BENCH OF MADRAS HIGH
COURT**

DATED :07.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.1084 of 2017

1.Ponnusastha
2.Santhanamari Natchiyar
3.Subbulakshmi ... Appellants/Petitioners

Vs.

1.Mathaiyan
2.The TATA AIG General Insurance Company Ltd.,
Through its Branch Manager,
Peninsula Corporate Park,
Piramal Tower, 9th Floor,
Ganpatraokadam Marg,
Lower Parel,
Mumbai-400 013. ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP NO.1129 of 2014 on the file of the Motor Accident Claims Tribunal, (IV Additional District Judge), Tirunelveli, dated 30.11.2016.

For Appellant	: Mr.T.Selvakumaran
For R2	:Mr.J.S.Murali
For R1	: No appearance



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JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimants challenging the judgment and decree dated 30.11.2016 made in MCOP NO.1129 of 2014 passed by the Motor Accident Claims Tribunal, (IV Additional District Judge), Tirunelveli and seeking enhancement of compensation.

2.The appellants filed the claim petition before the Tribunal stating that on 27.07.2014 at about 05.30 a.m, when the deceased viz., Iyyappan, was traveling in a car bearing Registration No.TN-18-V-0335 from Kanchipuram to Chennai, a lorry bearing Registration No.TN-23-BZ-5829 was parked on the middle of the road without any indicator, and hence, the car collided on the back side of the lorry, which resulted in the accident, and the deceased sustained fatal injuries.

3.According to the appellants, the deceased was aged 33 years at the time of the accident and had a degree in Bachelor of Naturopathy and Yogic Science. He was working as an intern and



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earning Rs.13,000/- per month and had the capacity to earn more money.

4.The first respondent, who is the owner of the lorry remained ex-parte.

5.The second respondent/Insurance Company herein opposed the claim petition on the ground that the driver of the lorry did not have a valid driving licence and that the accident took place only due to the rash and negligent driving of the driver of the car and hence, they are not liable to pay compensation.

6.To substantiate the case, the first claimant examined himself as P.W.1 and another witness was examined as P.W.2 and marked 27 documents as Exs.P.1 to P.27. The respondents, neither examined any witness nor marked any documents.

7.The Tribunal, after considering the oral and documentary evidence, awarded a sum of Rs.32,16,000/- as



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compensation payable by the second respondent. Aggrieved over the same, the appellants/claimants filed the present appeal.

8.The learned counsel for the appellants submitted that the deceased had a degree in Bachelor of Naturopathy and Yogic Science and was earning more than Rs.13,000/- at the relevant point of time; that the appellants had produced the documents before the Tribunal to show that the similarly placed persons were earning Rs.82,000/- in the year 2024; and that the compensation has to be enhanced.

9.Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that in the absence of any evidence to prove the income of the deceased, the Tribunal had correctly fixed the notional monthly income at Rs. 18,000/- ; that the Tribunal awarded an excess amount of Rs. 2,50,000/- for loss of love and affection; and hence, prayed for dismissal of the appeal.



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10.This Court has carefully considered the rival submissions made on either side and also perused the materials available on record.

11.The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable.

12.The Tribunal had taken into consideration Ex.P.21- Government Order, which evidenced that the deceased was earning Rs.13,000/- during the internship period and that he was likely to earn a minimum of Rs.18,000/-, and had fixed the notional income at Rs.18,000/-. The records produced by the learned counsel for the appellants show that the salary of the graduates, who were equally qualified as that of the deceased pertains to the years 2022-2024. In any case, no such document was filed before the Tribunal. This Court is of the view that considering the fact that the deceased was a meritorious student and was earning Rs.13,000/- as an intern, the notional income



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could have been fixed on the higher side by the Tribunal. However, taking into consideration the fact that a sum of Rs.2,50,000/- was awarded by the Tribunal towards loss of love and affection to the claimants, who are the parents and sister of the deceased, which is on the higher side, and in excess of the amount fixed in the guidelines issued by the Hon'ble Supreme Court, this Court is of the view that the overall compensation awarded by the Tribunal is just and reasonable, and hence, no interference is called for. Hence, the Civil Miscellaneous appeal is dismissed. No costs.

07.08.2024

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



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To

- 1.The Motor Accident Claims Tribunal,
(IV Additional District Judge),
Tirunelveli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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