



C.M.A.(MD) No.183 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

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1.Christy
W/o.Beniyel

2.Sofia Yoonu Hepziba
D/o.Beniyel

3.Solomon
S/o.Beniyel

4.Mercy
W/o.Sankar

... Appellants

Vs.

1.Amirtha Nayagam
S/o.Savariraj

2.HDFC ERGO General Insurance
Company Limited,
Through its Branch Manager,
III Floor, Thiripura Arcade,
No.75-A, Trivandram Road,
Palayamkottai,
Tirunelveli - 600 002.

... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the award amount in M.C.O.P.No.1630 of



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2016 on the file of the Motor Accident Claims Tribunal (Principal District Court), Tirunelveli, dated 13.02.2018.

For Appellant : Mr.T.Selvakumaran

For R1 : Mr.P.M.Vishnuvarthanan

For R2 : Mr.N.Shylappa Kalyan

J U D G M E N T

The instant appeal has been filed by the claimants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal (Principal District Court), Tirunelveli, *vide* its Judgment and Decree dated 13.02.2018 passed in M.C.O.P.No.1630 of 2016.

2. Since the finding on negligence and the liability are not under challenge, the facts leading to the filing of the claim petition are unnecessary for the disposal of this appeal.

3. The learned counsel for the appellants submitted that though the appellants had produced the evidence to show that the deceased was running a shop selling home appliances in the name of 'Jebastian Home Needs' and produced Exs.P4 to P8 (Series) to prove the nature of



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transactions made in the said shop, the Tribunal had taken a meagre notional income of Rs.7,500/- per month and therefore prayed for enhancement.

4. The learned counsel for the second respondent, Insurance Company, per contra, submitted that the deceased was 62 years old at the time of the accident, and in the absence of any documentary proof either to prove the avocation or the income, the notional income fixed by the Tribunal is in accordance with law, and the award of the Tribunal does not call for interference. The learned counsel for the second respondent further submitted that the Tribunal, without any basis, had imposed a cost of Rs.5,000/- on the second respondent, Insurance Company, since it had allegedly taken a false plea before the Tribunal.

5. The only point for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable.

6. The claimants had marked Ex.P8 (Series), which are Receipts for the purchase of home appliances for the purpose of sale in the shop 'Jebastian Home Needs' run by the deceased. The claimants had also



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marked Ex.P4 (Series) - Installment Cards, Ex.P5 (Series) - Bill Books, and Ex.P6 (Series) - Account Books for the shop, which reveal that the deceased had sold home appliances to various customers on installment basis. Though the above documents do not reveal the exact income earned by the deceased, this Court is of the view that the above documents and the evidence of P.W.1, the wife of the deceased, the appellants have established the avocation of the deceased.

7. Considering the age of the deceased, the year of the accident, and the avocation, this Court is of the view that the notional income can be fixed at Rs.12,000/- per month. Since there are four dependents, 1/3 of the income has to be deducted towards personal expenses. Thus, the compensation under the head loss of income has to be Rs.6,72,000/- [Rs. 12,000/- x 12 x 7 x 2/3].

8. This Court finds that the Tribunal has awarded compensation of Rs.40,000 under the head 'loss of consortium' to the first appellant only but has not awarded the same to the second to fourth appellants, who are the children and mother of the deceased. Hence, a sum of Rs.1,20,000/- [Rs.40,000/- x 3] is awarded under the head 'loss of consortium' to the



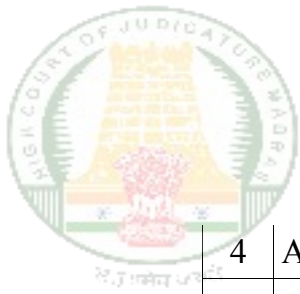
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second to fourth appellants. Thus, the compensation under the head 'loss of consortium' to the appellants would be Rs.1,60,000/- [Rs.1,20,000/- + Rs.40,000 already awarded by the Tribunal].

9. As regards the additional cost imposed on the second respondent, Insurance Company, it is seen that the second respondent had taken a plea before the Tribunal in the counter that the insured vehicle did not have a valid permit. However, R.W.1, examined on the side of the second respondent, had deposed that the insured vehicle had a valid permit. The plea taken in the counter cannot be said to be a deliberate false statement. In fact, it is the respondents, who had examined R.W.1. Therefore, the direction to pay cost of Rs.5,000/- is unwarranted and hence is set aside.

10. The compensation under the other heads is just and reasonable and is therefore confirmed. The total compensation is modified as follows:

Sl. No	Heads	Amount awarded by the Tribunal	Amount awarded by this Court	Award confirmed, enhanced, set aside, or granted
1	Loss of Income	Rs.4,20,000/-	Rs.6,72,000/-	Enhanced
2	Funeral Expenditure	Rs. 15,000/-	Rs. 15,000/-	Confirmed
3	Transport Expenditure	Rs. 10,000/-	Rs. 10,000/-	Confirmed



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4	Additional costs	Rs. 5,000/-	-	Set aside
5	Consortium to the 1 st claimant	Rs. 40,000/-	Rs. 40,000/-	Confirmed
6	Consortium to the 2 nd to 4 th claimants	-	Rs.1,20,000/-	Granted
Total		Rs.4,90,000/-	Rs.8,57,000/-	Enhanced by Rs.3,67,000/-

11. The second respondent, Insurance Company, is directed to deposit the enhanced award amount of Rs.8,57,000/- together with interest at 7.5% per annum from the date of the claim petition till the date of realization (excluding the period of dismissal, if any) and costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.

12. On such deposit, the appellants are permitted to withdraw the same as per the apportionment fixed by the Tribunal along with the proportionate interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

13. The appellants are directed to pay the necessary court fee, if any, for the enhanced amount of compensation.



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WEB COPY 14. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs.

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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

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Copy To:

- 1.The Principal District Judge,
Motor Accident Claims Tribunal,
Tirunelveli, Tirunelveli District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court, Madurai.



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SUNDER MOHAN, J.

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