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C.M.A.No.3717 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.3717 of 2021

1.Firozbee

2.Nyamath

3.Reshma

4.Asmathulla

5.Reehana

6.Minor Naziya

... Appellants

*(Adopted daughter of Late Rahamathullah,
(Minor.Naziya Rep. by N/F. Mother – Firozbee)*

VS.

1.Narayana Gowda

2.United India Insurance Company Limited,
Rep by its Manager,
Malur-Hosur Main Road,
Opposite Govt.First Grade College,
Malur, Kolar,
Karnataka State-

... Respondents



C.M.A.No.3717 of 2021

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, praying to enhance the compensation amount made in Judgment and Decree dated 21.05.2020 made in M.C.O.P.No.445 of 2019 on the file of the Motor Accident Claims Tribunal Special District Court for Motor Accident Claims Cases, Krishnagiri by allowing this Civil Miscellaneous Appeal.

For Appellants : Mr.S.P.Yuaraj

For R1 : Mr.S.Chinnasamy

For R2 : Mr.R.Srividhya

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation ordered by the Motor Accident Claims Tribunal-Special District Court for Motor Accident Claims Cases, Krishnagiri.

2. It is not in dispute that husband of the 1st claimant and the father of the claimants 2 to 6 namely Rahamathullah and one Dasthagir proceeded in TVS Moped bearing Registration No.TN-10-4386. The said Moped was driven by the said Dasthagir. The above said Rahamathullah, who was a pillion rider died due to motor accident that had taken place on 09.04.2017.



C.M.A.No.3717 of 2021

It was claimed that the said accident was caused by the rash and negligent driving of the Driver of the Tractor Trailer owned by 1st respondent insured with the 2nd respondent. Both the learned counsel appearing for the appellants and respondents have not advanced any arguments on negligence as well as liability aspect. Therefore, facts necessary for fixing the negligence as well as liability aspect have not been discussed in this judgment.

3. Before the Tribunal, the 1st appellant/1st claimant was examined as PW.1 and Driver of the Two Wheeler namely Dhasthagir was examined as PW.2. The Driver of the Tractor Trailer was examined as RW.1.

4. Based on the evidence available on record, the Tribunal awarded a sum of Rs.9,01,900/- as compensation in favour of the claimants. Not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have come by way of this appeal.

5. The learned counsel appearing for the appellants/claimants would submit that the Tribunal fixed notional income only at Rs.9,000/- per month



C.M.A.No.3717 of 2021

for the accident that had taken place in the year 2017. Therefore, according to him, the notional income fixed by the Tribunal needs enhancement. The learned counsel further submitted that the Tribunal committed error in awarding a sum of Rs.25,000/- towards loss of consortium to wife and a sum of Rs.40,000/- towards loss of love and affection regarding other claimants.

6. The learned counsel appearing for the 2nd respondent/Insurance Company would submit that claimants failed to produce any document to prove avocation or the income of deceased and the Tribunal was justified in fixing the notional income at Rs.9,000/- per month and therefore, the award passed by the Tribunal requires no interference.

7. A perusal of the FIR/Ex.P1 would indicate that the accident had occurred on 09.04.2017. As per the Post Mortem Certificate/Ex.P2, the age of the deceased was mentioned as 56 and the same tallies with the age of the claimants in the claim petition. Therefore, the age of the deceased is fixed as 56 years.



C.M.A.No.3717 of 2021

8. In the claim petition, the claimants claimed that deceased was engaged in Mango and Tamarind business. However, they have not produced any documents to prove the avocation or income of the deceased. Therefore, the Tribunal was constrained to fix the notional income at Rs.9,000/- per month. Having regard to the date of accident (09.04.2017) and the age of the deceased at the time of accident (56 years), it would be appropriate to fix Rs.15,000/- per month as a notional income for the deceased. If 10% future prospects is applied as per law laid down by Apex Court, his monthly income can be taken as Rs.16,500/-. The applicable multiplier for the age of the deceased is nine. Since the deceased had more than three dependants, 1/4 of the income was to be deducted as per the law laid down by the Apex Court in *Sarla Verma and others vs. DTC and others* reported in (2009) 6 SCC 121. Therefore, the claimants are entitled to a sum of Rs.13,36,500/- under the head of loss of dependency ($16,500 \times 12 \times 9 \times 3/4 = 13,36,500/-$).

9. In addition to the above said sum, the compensation under the head loss of dependency, the Tribunal awarded a sum of Rs.20,000/- under the head loss of estate. As per *Pranay Sethi* case, the claimants are entitled to



C.M.A.No.3717 of 2021

only Rs.15,000/- under the said head. The amount awarded under the head loss of consortium to wife is enhanced from Rs.25,000/- to Rs.40,000/-. The claimants 2 to 6 are entitled to Rs.40,000/- each under the head love and affection. The Funeral Expenses fixed by the Tribunal is confirmed. Therefore, the compensation awarded by the Tribunal under various heads are modified as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court
1.	Loss of Dependency	Rs.8,01,900/-	Rs.13,36,500/-
2.	Loss of Estate	Rs.20,000/-	Rs.15,000/-
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
4.	Love and Affection	Rs.40,000/-	Rs.2,00,000/-
5.	Loss of Consortium	Rs.25,000/-	Rs.40,000/-
	Total	Rs.9,01,900/-	Rs.16,06,500/-

10. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.16,06,500/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, to the credit of M.C.O.P.No.445 of 2019 on the file of the Motor Accident Claims Tribunal Special District Court for Motor Accident Claims Cases, Krishnagiri, within a period of four weeks from the date of receipt of copy



C.M.A.No.3717 of 2021

of this judgment. On such deposit, the appellants/claimants are entitled to withdraw the award amount now enhanced by this Court by making formal application, subject to satisfaction of Tribunal as to attainment of majority by 6th appellant/6th claimant.

11. With the above direction, the Civil Miscellaneous Appeal is partly allowed. No costs.

05.02.2025

Index :Yes/No
Speaking order :Yes/No
Neutral Citation :Yes/No
dm

To

- 1.The Motor Accident Claims Tribunal Special District Court for Motor Accident Claims Cases, Krishnagiri.
- 2.The Manager,
United India Insurance Company Limited,
Malur-Hosur Main Road,
Opposite Govt.First Grade College,
Malur, Kolar,
Karnataka State.
- 3.The Section Officer,
VR Section,
High Court, Madras.



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C.M.A.No.3717 of 2021

S.SOUNTHAR, J.

dm

C.M.A.No.3717 of 2021

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