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C.M.A.No.1216 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.1216 of 2022

1.J.Vijaya
2.J.Harikrishnan
3.J.Ramu
4.J.Babu
5.J.Sundari
6.J.Sivakumar
7.J.Usha

... Appellants / Petitioners

Vs.

1.M/s. Medident India Pvt. Ltd.,
No.32, Nelson Manickam Road,
Aminjikarai, Chennai – 600 029.

2. ICICI Lombard General Insurance Co. Ltd.,
TP Investigation, 84 & 85
Walltax Road, 1st Floor,
Arihant Plaza, Chennai – 600 003.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 21.04.2021 passed in M.C.O.P.No.6700 of 2017 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.1, Small Causes Court, Chennai.



C.M.A.No.1216 of 2022

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For Appellants : M/s.S.Nazira Banu
For M/s.Ramya V. Rao

For R1 : Door locked

For R2 : M/s.L.Sai Pooja
For Mr.M.Jayaraj

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants seeking for enhancement of compensation awarded in M.C.O.P.No.6700 of 2017, dated 21.04.2021 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.1, Small Causes Court, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The first claimant is the wife and the claimants 2 to 4 are the sons of the deceased Jayaraman. The fifth claimant is the second wife of Jayaraman and claimants 6 and 7 are the sons born to them.



C.M.A.No.1216 of 2022

4. The deceased Jayaraman was met with road accident on 06.09.2017

at about 20.30 hours at Thuraipakkam, Chennai. The first respondent is the owner of the offending vehicle and the second respondent is the insurer. The claimants come forward with the claim petition seeking compensation for a sum of Rs.30 lakhs by invoking Section 166 of the Motor Vehicles Act, 1988 for the death of the deceased Jayaraman.

5. Before the Tribunal, the first respondent has not filed counter and contested the claim, disputed the manner in which the accident had taken place. They have also stated that they sold the vehicle in favour of one Meganathan and the ownership has already been transferred in favour of him. Hence, they are not liable to pay the compensation.

6. The second respondent - Insurance Company disputed the manner in which the accident had taken place and they also disputed the age, income, avocation of the deceased and dependency of the claimants.

7. The Tribunal after considering the evidence placed on record by both sides accepted the case of the claimants that the deceased was died due



C.M.A.No.1216 of 2022

to the negligent act on the part of the driver of the vehicle belongs to the first respondent, insured with the second respondent. The Tribunal has also quantified the compensation and awarded a sum of Rs.5,78,000/- payable by the respondents. However, the Tribunal dismissed the claim filed by the second wife i.e., the 5th claimant.

8. Aggrieved over the quantum of compensation, this appeal has been filed by the claimants including the 5th claimant against whom the claim petition was dismissed.

9. On perusal of grounds, the claimants have not raised any grievance regarding dismissal of the claim made by the 5th respondent. The entire grievance raised in this appeal is only with regard to the quantum of compensation awarded.

10. M/s.S.Nazira Banu, learned counsel appeared on behalf of the appellants submitted that the deceased was working as a Security Guard in a private concern and monthly income was notionally fixed at Rs.6,000/- per month, which is on the lower side and considering the period of accident,

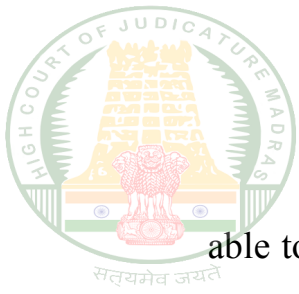


the compensation is to be enhanced by fixing notional income. She has also submitted that the compensation awarded under other heads are also not within the prescribed norms followed by this Court. Hence prays to enhance the same.

11. Per Contra, the learned counsel for the Insurance Company submitted that based on the age and avocation of the deceased, claimed by the claimants, the Tribunal has properly fixed the notional income and there is no need to enhance the compensation.

12. I have considered the rival submissions made on both sides and also perused the records available.

13. The claimants relied on the employment certificate for proving the age of the deceased whereas, the Tribunal after considering the Post Mortem Certificate – Ex.P3 fixed the age of the deceased as more than 65 years. On perusal of the Aadhar Card of the other claimants – Ex.P6, it reveals that the deceased would have been aged more than 65 years. Though they were able to produce the Employment Certificate to prove the income, they were not



C.M.A.No.1216 of 2022

able to produce any official documents to show that what was the exact age of the deceased and thereby, they have chosen to avoid producing any official documents to prove the age of the deceased.

14. By relying on the age mentioned in the Post Mortem Certificate – Ex.P3, the Tribunal has fixed the age of the deceased and since no other acceptable legal documents available, I find no reason to re fix the age of the deceased. Further there is no evidence placed on record to show the avocation of the deceased and however, on careful comparison of the Aadhar Cards marked as Ex.P6 before the Tribunal only shows that the deceased would have been aged more than 65 years as observed by the Tribunal. Considering the date of accident, notional income of the deceased is hereby modified to Rs.9,000/- per month as per the Division Bench judgment of this Court in *Andal and others vs. Avinav Kannan and others (2019 (1) TN MAC 54 (DB))*.

15. The deceased in this case is not eligible for future prospects since the deceased was aged about 65 years at the time of accident, as per the Judgment of the Apex Court in *National Insurance Co. Ltd., vs. Pranay*



Sethi and other (2017(2) TN MAC 609 (SC): 2017 (16) SCC 680) the

Tribunal has not added future prospects. The Tribunal has rightly deducted 1/4 towards his personal expenses. Since the age of the deceased 65 years at the time of accident, the applicable multiplier is '7' as per the Judgment of the Apex Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]***. Accordingly, the compensation awarded by the Tribunal under the head loss of income is modified as follows: $[9000 \times 12 \times 7 \times 1/4] = \text{Rs.}5,67,000/-$.

16. The Tribunal has awarded compensation of Rs.40,000/- under the head loss of consortium similarly, the Tribunal has awarded Rs.1,25,000/- under the head loss of love and affection. The compensation under the head loss of Consortium is not in accordance with the Judgment of the Apex Court in ***Magma General Insurance Co. Ltd., vs. Nanu Ram and Others [2018 (18 SCC 130 : MANU/SC/1012/2018)]*** and ***United India Insurance Co., Limited vs. Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11 SCC 780]***. Hence, the compensation awarded under the head love and affection is hereby modified and the compensation under the head loss of Consortium is hereby awarded and the claimants are entitled for a sum of



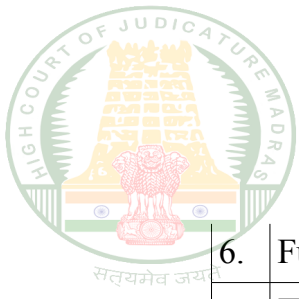
C.M.A.No.1216 of 2022

Rs.40,000/- each (except claimant No.5, 2nd wife of the deceased) under the head loss of consortium. Accordingly, a sum of Rs.2,40,000/- is hereby awarded under the head loss of consortium.

17. As far as the other conventional heads such as Loss of Estate and Funeral Expenses are concerned, the Tribunal has rightly awarded Rs.15,000/- on each heads and there is no need for interference and the same are hereby confirmed. The Tribunal has awarded a sum of Rs.5,000/- under the head Transport Charges and this Court is inclined to accept the same.

18. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

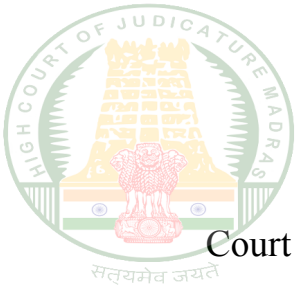
S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	Rs.3,78,000/-	Rs.5,67,000/-	Enhanced
2.	Loss of Consortium	Rs.40,000/-	Rs.2,40,000/-	Enhanced
3.	Loss of Love and Affection	Rs.1,25,000/-	---	Cancelled
4.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Transport Charges	Rs.5,000/-	Rs.5,000/-	Confirmed



C.M.A.No.1216 of 2022

6.	Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
	Total Compensation	Rs.5,78,000/-	Rs.8,42,000/-	Enhanced to Rs.2,64,000/-

19. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,78,000/- is hereby enhanced to Rs.8,42,000/- [Rupees Eight Lakhs and Forty Two Thousand only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The Insurance Company is directed to deposit the amount now awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.6700 of 2017 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.1, Small Causes Court, Chennai. On such deposit, the appellants are permitted to withdraw the amount as apportioned by the Tribunal along with interest and costs, less the amount already withdrawn, if any. The Tribunal shall disburse the amount now awarded by this Court by crediting in to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary



C.M.A.No.1216 of 2022

Court fee, if any, on the enhanced compensation. In other aspects including dismissal of claim of claimant No.5, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

02.01.2025

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



C.M.A.No.1216 of 2022

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To:

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras.



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C.M.A.No.1216 of 2022

K. RAJASEKAR., J.

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C.M.A.No.1216 of 2022

02.01.2025