



C.M.A.No.143 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 27.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.143 of 2025

1.Manickam

2.Subramani

... Appellants

Vs.

1.K.Periyasamy

2.M/s.United India Insurance Company Limited,
Divisional Office No.1, 104-A,
Peramanur Main Road,
Salem – 7.

3.Jisha

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order in M.C.O.P.No.2082 of 2015 dated 08.08.2019 on the file of the Motor Accident Claims Tribunal/I Additional District and Sessions Court, Salem.

For Appellants : M/s.Ramya V. Rao

For Respondents : Notice dispensed with [R1 & R3]
Mr.J.Chandran [R2]



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JUDGMENT

WEB COPY The claimants are before this Court seeking an enhancement of the compensation amount passed by the Motor Accidents Claims Tribunal/I Additional District and Sessions Court, Salem in M.C.O.P.No.2082 of 2015 dated 08.08.2019.

2. The appellants/claimants and the 3rd respondent are the father, mother and wife of the deceased Elumalai. On 06.07.2015 at about 09.15 hours, the deceased was standing on the left side of the road at Sollampallam Bus Stop on Steel Plant Main Road – Pudhu Road, at that time, the rider of the Hero Honda Splendor motorcycle bearing Regn.No.TN-30-AR-0176 belonging to the 1st respondent, which was insured with the 2nd respondent, drove the same in a rash and negligent manner and caused the accident. Due to the sudden impact, the deceased sustained head injuries and other multiple injuries. Immediately, he was taken to Government Hospital, Salem for treatment and after continuous treatment, he died on 10.07.2015 at about 10.00 a.m. Therefore, the claimants have filed a claim petition claiming a sum of Rs.25,00,000/- as



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compensation before the Tribunal in M.C.O.P.No.2082 of 2015 for the death of the deceased.

3. Before the Tribunal, the claimants examined 2 witnesses viz., P.W.1 and P.W.2 and marked 8 documents viz., Ex.P.1 to Ex.P.8. On the side of the respondents, they have examined 2 witnesses viz., R.W.1 and R.W.2 and marked 5 documents viz., Ex.R.1 to Ex.R.5. After adjudication, the Tribunal partly allowed the petition and awarded a sum of Rs.10,33,200/- as compensation to the claimants and the 3rd respondent. Not satisfied with the same, the claimants/appellants have preferred the present appeal.

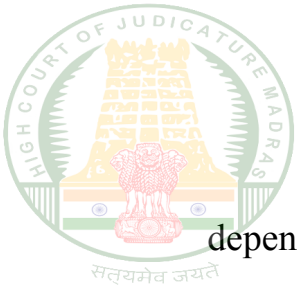
4. Learned counsel appearing for the appellants submitted that, initially, the appellants have filed the claim petition before the Tribunal. At the instigation of the 2nd respondent/insurance company, the 3rd respondent was impleaded as a party in the claim petition vide order dated 27.09.2018 in M.P.No.715 of 2018. Ultimately, the Tribunal arrived at a conclusion that the 3rd respondent was the wife of the deceased and she is also entitled to receive compensation along with the appellants.



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5. It is further submitted by the learned counsel for the appellants that, though the 3rd respondent married the deceased, however, within a month, she deserted her husband. Thereby, there was a customary divorce in between them, however, the same was not accepted by the Tribunal and held that the customary divorce is not permissible, when there is a provision for granting divorce in terms of section 13(1A) of the Hindu Marriage Act. However, the present appeal is filed solely on the ground that the accident is of the year 2015 and at the time of accident, the deceased was aged about 30 years and he was working as a Cooking Master and earned a sum of Rs.15,000/- p.m., however, the Tribunal fixed a sum of Rs.6,500/- as notional income of the deceased, which is on the lower side and the same requires to be re-considered by this Court. Further, the compensation awarded under the head loss of love and affection is also on the lower side and the same requires to be enhanced. Accordingly, he prays for appropriate enhancement in favour of the appellants.

6. Per contra, learned counsel appearing for the 2nd respondent/Insurance Company contended that, the 3rd respondent is not a



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dependent of the deceased. Though the 2nd respondent made objection before the Tribunal for not impleading the 3rd respondent as a party, however, on behalf of the 3rd respondent, no one appeared to prove her dependency with the deceased. Thereby, the Tribunal rightly deducted 50% towards personal expenses and awarded compensation, which does not requires any interference. Accordingly, he prayed for dismissal of this appeal.

7. Heard the learned counsel appearing for the appellants and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

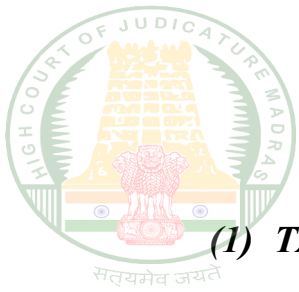
8. The factum and manner of the accident are not in dispute. Therefore, this Court is not entering into the said aspect. The relationship of the appellants and the 3rd respondent with the deceased is also not in dispute. Admittedly, there is no valid divorce in between the 3rd respondent and the deceased in terms of Section 13(1A) of the Hindu Marriage Act and it is only a customary divorce, which is impermissible, when there is a



provision available for granting divorce between the parties. The said issue was elaborately considered by the Tribunal and held that the 3rd respondent is also entitled to receive compensation and fixed compensation in favour of the 3rd respondent, which does not require any interference.

9. Once it is held that the 3rd respondent is entitled to received compensation, as the wife of the deceased, she is also a dependent of the deceased. Hence, number of the dependants of the deceased is three and 1/3rd has to be deducted towards personal expenses of the deceased.

10. Now, coming to the question of quantum of compensation awarded by the Tribunal in favour of the appellants and the 3rd respondent. To compute the income under the head loss of income, no document in support of proof of the income of the deceased has been filed. However, it is claimed by the appellants/claimants that, at the time of accident, the deceased was working as a Cooking Master and earned a sum of Rs.15,000/- per month. As per the decision of the Hon'ble Apex Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in 2014



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(1) **TANMAC 459**, notional income of a vegetable vendor is fixed at

Rs.6,500/-, where income of the deceased is not proved through documentary evidence. However, the Tribunal had fixed a sum of Rs.6,500/- as notional income, which is on the lower side. Hence, by applying the ratio laid down by the Hon'ble Supreme Court in *Syed Sadiq's* case, fixing a notional income of Rs.12,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.16,000/-. Deducting 1/3rd towards the personal expenses of the deceased, the income of the deceased is arrived at Rs.11,200/- per month and the deceased being aged about 30 years, as evidenced from the records, adopting the multiplier of 17 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in **(2009) 6 SCC 121**, the loss of income to the family is arrived at Rs.11,200/- * 12 * 17 = Rs.22,84,800/-, which is worked out as follows :-



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Loss of Income	Amount (in Rs.)
Notional income (Per month)	12,000
Add: Future Prospects (Rs.12,000 x 40%) (Per month)	4,800
	16,800
Less: Personal expenses (1/3 rd) (Rs.16,800/- x 1/3 rd) (Per month)	5,600
	11,200
Notional income (per annum) (Rs.11,200/- x 12)	1,34,400
Multiplier	17
Total	22,84,800

11. Further, the Tribunal had awarded a sum of Rs.15,000/- towards funeral expenses; Rs.75,000/- towards loss of love and affection and Rs.15,000/- towards loss of estate. This Court is of the view that the compensation under the heads funeral expenses and loss of estate are just and reasonable and the same is confirmed. However, the compensation awarded under the head loss of love and affection is on the lower side and the same is enhanced to a sum of Rs.1,20,000/- by granting a sum of Rs.40,000/- each to the appellants and the 3rd respondent.

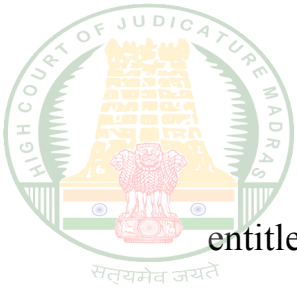


12. In the above circumstances, the compensation awarded by the

WEB COPY Tribunal is modified as under :-

S. No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Loss of income	9,28,200/-	22,84,800/- (enhanced)
2	Funeral expenses	15,000/-	15,000/-
3	Loss of love and affection	75,000/-	1,20,000/- (enhanced)
4	Loss of estate	15,000/-	15,000/-
	Total	10,33,200/-	24,34,800/-

13. Accordingly, the Civil Miscellaneous Appeal is allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.10,33,200/-** to **Rs.24,34,800/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.2082 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. From the above modified compensation amount, the appellants 1 and 2 are



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entitled to a sum of Rs.9,00,000/- each and the 3rd respondent is entitled to a sum of Rs.6,34,800/-. It is made clear that pursuant to the death of the deceased, if it is known that the third respondent has married someone, she is not entitled to compensation and the Tribunal is directed to disburse her share equally to the appellants. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants and the 3rd respondent through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants. The appellants/claimants are directed to pay necessary additional Court fee on the enhanced compensation amount. It is made clear that the appellants/claimants will not be entitled to any interest for the delay period, if any. No costs.

27.01.2025

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No
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M.DHANDAPANI,J.,

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To

The Motor Accident Claims Tribunal/I Additional District and Sessions
Court, Salem.

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