

**(2014) 11 MAD CK 0528**

**Madras High Court**

**Case No:** Civil Miscellaneous Appeal (MD). No. 1040 of 2012

S. Selvi

APPELLANT

Vs

M. Dharvesh Mahideen

RESPONDENT

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**Date of Decision:** Nov. 26, 2014

**Hon'ble Judges:** S. Vimala, J

**Bench:** Single Bench

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### **Judgement**

S. Vimala, J.

The wife aged 24 years, daughters aged 7, 6 and son, aged 1, along with petitioners 5 & 6 filed the claim petition claiming a compensation of Rs.10 lakhs in respect of the death of one Sugumar. He was a driver of an Auto, earning a sum of Rs.11,000/- per month, contributing the entire income to his family. In respect of the death of the sole breadwinner of the family, the claimants have filed this claim petition.

2. While quantifying the compensation, the tribunal has taken the age of the deceased as 30 and adopting the multiplier at 18 and taking the monthly income at Rs.3,000/-, the loss of dependency has been calculated at  $(Rs.3,000 \times 12 \times 18) = Rs.6,48,000/-$ . Awarding a sum of Rs.15,000/- to each of the claimants, thereby awarding a sum of Rs.90,000/- towards loss of love and affection, Rs.15,000/- towards loss of consortium, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards transport expenses, the total compensation has been quantified at Rs. 3 7,63,000/- and break up details are as under:

3. Contending that the compensation awarded is meagre and not commensurate with the earnings of the deceased, the claimants have filed this appeal.

4. The contention of the learned counsel for the claimants is that when the dependents were more in number, nobody can expect spending of 1/3rd upon the deceased and therefore, deduction at 1/3rd made by the tribunal cannot be accepted. This contention is well-founded, and as per the reported decision in 4 (Santhosh Devi Vs. National Insurance Company Limited and others) reported in

2012 Vol.(1) O.J.R. (S.C), deduction ought to have been made based on the number of dependents, who are depending upon the deceased. As there were six dependents upon the deceased, the tribunal ought to have deducted 1/5th towards personal expenses. If 1/5th amount is deducted, the contribution of the deceased to the family would be Rs.3,600/- and by adopting multiplier 18, the compensation payable on account of loss of dependency would be Rs.7,77,600/-.

5. The award granted on the grounds of funeral expenses and transport expenses are confirmed.

6. So far as loss of love and affection is concerned, it has been granted at Rs. 15,000/- for each of them indiscriminately. Due to the death of the deceased, the minor children will suffer from loss of guidance, as it is the responsibility of the parents to nurture them well. When the children had lost their father, at their young age, the entire future of the children will be doomed. Hence, the 5 compensation for loss of love and affection in respect of the children should have been estimated at different rates than the compensation awarded for loss of love and affection for others. If we apply the above stated principle, the loss of love and affection for the major claimants, i.e., the appellants 1, 5 and 6 have to be awarded awarded at Rs.10,000/- each. Accordingly, the loss of love and affection awarded by the Tribunal at the rate of Rs.15,000/- to the appellants 1, 5 and 6, stands modified to Rs.10,000/- each. It would be appropriate to award a sum of Rs. 40,000/- towards loss of love and affection to each of the minor claimants, i.e., appellants 2 to 4. Accordingly the loss of love and affection awarded by the Tribunal at the rate of Rs.15,000/- to the appellants 2 to 4, stands modified to Rs. 40,000/- each. The loss of consortium to the first claimant is enhanced from Rs. 15,000/- to Rs.25,000/-. Then, the total amount of compensation would be Rs. 9,62,600/- (rounded off to Rs.9,63,000/-). The details of the modified compensation are as under:

7. In the result, this Civil Miscellaneous Appeal is allowed, enhancing the quantum of compensation from Rs.7,63,000 to Rs.9,63,000/-. The second respondent/ Insurance Company shall pay the enhanced amount of compensation with interest at the rate of 7.5% within a period of 6 weeks from the date of receipt of a copy of this order.

8. The apportionment of compensation shall be made as per the order of the tribunal. The minors' share shall be deposited in any one of the Nationalized Banks till the minors attain majority. The first petitioner/Natural guardian is entitled to withdraw the interest once in three months from the bank and utilize the same for the benefit of the minors. No costs.