

**C.M.A.No. 3451 of 2005**

**S. RAMATHILAGAM, J.**

Heard, learned counsel appearing for the appellants and learned counsel for the respondents.

2. This appeal has been posted today under the caption, "For Being Mentioned", at the instance of the learned counsel for the appellants/claimants

3. It has been brought to the notice of this Court by the learned counsel for the appellants that the first appellant/ husband of the deceased and third appellant/ mother of the deceased have passed away and the sole surviving claimant is the second appellant and hence, she is solely entitled to the compensation awarded by the Judgment dated 26.09.2018, which needs certain modification as certain error has crept in, while calculating the loss of income of the deceased.

4. It has been pointed out by the learned counsel for the appellants that the Tribunal has erroneously deducted 2/3<sup>rd</sup> towards personal expenses of the deceased instead of deducting 1/3<sup>rd</sup>. Further, the Tribunal had not awarded any amount towards future

5. This Court finds the said submission reasonable. On a perusal of the order passed by the Tribunal, it is clear that even though the Tribunal had taken into consideration the income of the deceased at Rs.5,000/- per month, it has erroneously taken into consideration Rs.1,500/- per month for the purpose of calculation of loss of income, instead of taking Rs.3,500/- per month.

6. By virtue of the decision of the Supreme Court, the deceased is entitled 40% towards future prospects and by taking the monthly income of the deceased at Rs.3,500/- and adding future prospects at 40% which would workout to Rs.1,400/-, the total loss of income per month can be worked out based on Rs.4,900/- (Rs.3,500/- + Rs.1,400/-). Out of the said sum of Rs.4,900/-, if  $\frac{1}{3}^{\text{rd}}$  is deducted, a sum of Rs.3,267/- can be taken as monthly salary and by applying the multiplier '17' the total pecuniary loss comes to Rs.3,267/- x 12 x 17 = Rs.6,66,468/- which is rounded off to Rs.6,66,400/-.

7. It is also seen that the Tribunal has not awarded any amount towards loss of estate and transportation. This Court feels it just and proper to award a sum of Rs.12,000/- towards loss of estate and Rs.5,000/- towards transportation.

8.In as much as there is no surviving consort, the loss of consortium awarded by the Tribunal is deducted. In this Court modifies the sum awarded by the Tribunal as well as in the order dated 26.09.2018 passed by this Court under various heads as follows:

| S.No         | Head                       | Compensation (in.Rs.) |
|--------------|----------------------------|-----------------------|
| 1.           | Pecuniary loss             | 6,66,400.00           |
| 2.           | Loss of love and affection | 20,000.00             |
| 3.           | Loss of estate             | 12,000.00             |
| 4.           | Funeral expenses           | 5,000.00              |
| 5.           | Transportation             | 5,000.00              |
| <b>Total</b> |                            | <b>7,08,400.00</b>    |

9.In as much as the appellants 1 and 3 are no more, the second appellant is the sole surviving legal heir of the deceased, she entitled to withdraw the entire award amount. The Insurance Company is directed to deposit the entire award amount as modifies this order within a period of two months from the date of receipt of copy of this order. On such deposit, the second appellant is entitled to withdraw the entire award amount. The rate of interest is awarded in the earlier order dated 26.09.2018 holds good.

**S. RAMATHILAGAM, J.**

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10. The Registry is directed to issue revised order copy forthwith.

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**07.06.2019**

**C.M.A.No. 3451 of 2005**

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 26.09.2018**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM**

**C.M.A. No.3451 of 2005**

1.S.Hariharan

2.S.H.Vaishnavi (Minor)  
Rep.by father & next friend

3.R.Subbulakshmi @ Lakshmi .. Appellants

Versus

1.V.Anukiragam

2.United India Insurance Company,  
38, Anna Salai, Chennai – 600 002. .. Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 06.01.2004 made in MACT O.P.No.1444/2000, on the file of the Motor Accidents Claims Tribunal (Court of Small Causes-II), Chennai.

For Appellant : Ms.Ramya Rao

For Respondent 2 : Mr.S.Baskaran

**J U D G M E N T**

The civil miscellaneous appeal has been preferred against

the award passed in M.A.C.T.O.P.No.1444/2000 dated 06.01.2004 by the II Judge Motor Accidents Claims Tribunal (Court of Small Causes), Chennai. The appellants herein are the claimants.

2.The facts leading to the claim petition are as follows:-

i)On 17.12.1999 at about 7.30 pm, when the deceased along with her husband was walking on the road, the lorry bearing registration No.MSL 6275, which came in the opposite direction driven in a rash and negligent manner and hit against the deceased and caused fatal injuries, which resulted in the death.

ii)The respondent insurance company in the counter statement denied the rash and negligent driving on the part of the lorry, by stating that it is the contributory negligence on the part of the pedestrian/deceased, which caused the accident. The other aspects regarding age, qualification were also disputed by the 2<sup>nd</sup> respondent/insurance company. The appellants claimed a sum of Rs.7,00,000/- as compensation (restricted to Rs.5,00,000/-). The Tribunal after analyzing the evidence and documents placed before the same, has awarded

a sum of Rs.3,23,000/- under various heads as follows:-

| <b>Heads</b>                  | <b>Amount<br/>Awarded by<br/>Tribunal (Rs)</b> |
|-------------------------------|------------------------------------------------|
| Pecuniary loss                | 3,06,000/-                                     |
| Loss of love and<br>affection | 10,000/-                                       |
| Loss of<br>Consortium         | 5,000/-                                        |
| Funeral Expenses              | 2,000/-                                        |
| <b>Total</b>                  | <b>3,23,000/-</b>                              |

4. Aggrieved against the said award, the claimants have preferred this appeal, pointing out the sum awarded under various heads viz., loss of consortium, love and affection, funeral expenses are low and on the whole, the sum awarded by the Tribunal at Rs.3,23,000/- is not justified against the claim of Rs.5,00,000/-.

5. Heard both sides and perused the materials available on record.

6. On a perusal of the documents and also the argument advanced by appellants/claimants, it is observed that due to the injury sustained by the deceased, the death occurred. It is

also seen that the deceased at the time of accident was working as P.A. to the officer in a private concern viz., M/s.Patel Roadways Pvt. Ltd., and he was earning Rs.5,000/- per month. His salary certificate was also placed before the Tribunal as Ex.P6. The Tribunal after deducting 1/3<sup>rd</sup> income of the deceased towards personal expenses, calculated the loss of income by considering his age as 32 and by applying the multiplier, has rightly calculated a sum of Rs.3,06,000/- towards Pecuniary loss, which needs no interference by this Court.

7.This Court by taking into consideration, the age of the deceased, is of the view that the sum awarded under various heads viz., loss of income to the claimants, loss of support to the family members of the deceased, funeral expenses and transport expenses are to be properly modified.

8.Accordingly, on considering the documents and the arguments advanced by the appellants, this Court modifies the sum awarded by the Tribunal under various heads as follows:-

| <b>Heads</b>                                                                       | <b>Amount<br/>Awarded by<br/>Tribunal<br/>(Rs)</b> | <b>Amount<br/>modified by<br/>this Court<br/>(Rs.)</b> |
|------------------------------------------------------------------------------------|----------------------------------------------------|--------------------------------------------------------|
| Pecuniary loss                                                                     | 3,06,000/-                                         | 3,06,000/-                                             |
| Loss of love and affection in<br>respect of appellants 1 & 3<br>(Rs.15,000/- each) | 10,000/-                                           | 30,000/-                                               |
| Loss of love and affection in<br>respect of appellant No.2                         |                                                    | 20,000/-                                               |
| Loss of Consortium                                                                 | 5,000/-                                            | 10,000/-                                               |
| Transport Expenses                                                                 |                                                    | 10,000/-                                               |
| Funeral Expenses                                                                   | 2,000/-                                            | 10,000/-                                               |
| <b>Total</b>                                                                       | <b>3,23,000/-</b>                                  | <b>3,86,000/-</b>                                      |

9. In the result, the Civil Miscellaneous Appeal is allowed. No costs. The award passed by the Tribunal is enhanced to Rs.3,86,000/- at the rate of interest at 7.5% per annum. The claimants are directed to pay additional court fee for the enhanced amount.

10. Accordingly, the respondent/Insurance Company is directed to deposit the entire amount awarded by this Court, with interest and costs, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw their respective

shares along with interest as per the apportionment of the Tribunal.

11. In view of the argument advanced by the appellants/claimants, the enhanced amount of Rs.63,000/- shall be deposited in the name of minor only, who is the 2<sup>nd</sup> appellant/claimant in any one of the Nationalised Banks, in interest bearing Fixed Deposit, till she attains majority. The rate of interest for the enhanced amount is 7.5% per annum.

**26.09.2018**

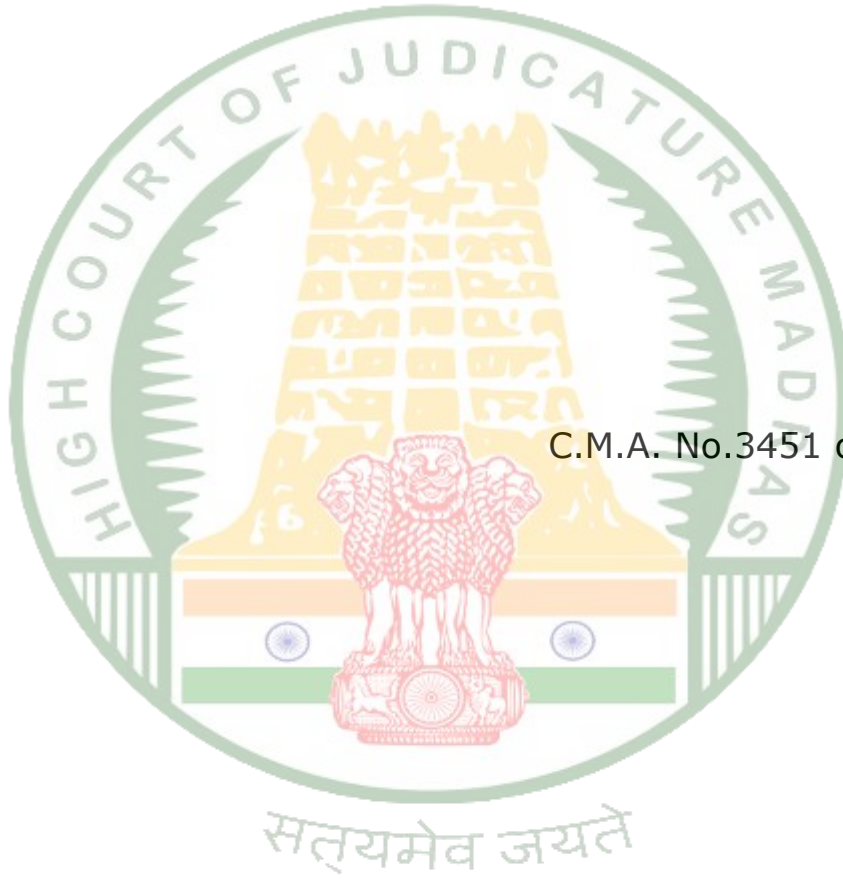
Index : Yes / No  
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To

1. The II Judge Court of Small Causes  
Motor Accidents Claims Tribunal,  
Chennai.
2. The Section Officer,  
V.R. Section,  
High Court,  
Madras – 104.

**S.RAMATHILAGAM,J.**

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C.M.A. No.3451 of 2005

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