

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2297 of 2012  
(Through Video Conferencing)

1.Nalini Ravindran

2.P.R.Ravindran

....Appellants/Claimants

Vs.

1.The Tamil Nadu Co-op.Milk Producers'  
Federation Ltd., Transport Unit,  
Madhavaram Milk Colony,  
Madhavaram, Chennai 600 051.

2.M.Balasundaram

(1 & 2 respondents were expte  
before the Tribunal)

3.National Insurance Co., Ltd.,  
Divisional Office,  
No.V, Plot No.-20, AD-1, II Main Road,  
Anna Nagar, Chennai 600 040.

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 28.02.2012 made in M.A.C.T.O.P.No.3350 of 2009, on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes) Chennai.

For Appellants : Mr.K.Surya Narayanan  
for Mr.M.Swamikkannu

For 1<sup>st</sup> Respondent : Mr.L.P.Shanmuga Sundaram

For 3<sup>rd</sup> Respondent : Mr.S.Vadivel

R2 : Set Exparte before the Tribunal

J U D G M E N T

The claimants are the appellants in this appeal and they have filed this appeal against the Impugned Judgment and Decree dated 28.02.2012 passed by the Motor Accident Claims Tribunal

(Chief Judge, Court of Small Causes) Chennai in  
M.A.C.T.O.P.No.3350 of 2009.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.8,72,000/- as compensation together with interest at 7.5% per annum from the date of petition till the date of deposit, to the appellants. They are the dependents of the deceased Hari Narayanan.

3. The appellants are the parents of the deceased Hari Narayanan who was aged about 20 years at the time of accident. On 13.09.2008 at about 7.45 hrs., while the deceased was riding a motorycle bearing Reg.No.TN 27 C 2216, in Sardar Patel Road, near Raj Bhavan Main Gate, a lorry bearing Reg.No.TN.22 W 7949 belonging to the first respondent and insured with the second respondent, driven by its driver allegedly in a rash and negligent manner and came from the same direction and hit against the deceased Hari Narayanan, as a result of which, he suffered grievous injury and later he died in the hospital. Therefore, the claim petition was filed by the appellants for compensation.

4. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry and directed the 3<sup>rd</sup> respondent / Insurance Company to pay a sum of Rs.8,72,000/- as compensation together with interest and cost from the date of the claim petition to the appellants/claimants. The break up of the amount awarded by the Tribunal are summarised below:-

|                                               |                 |
|-----------------------------------------------|-----------------|
| For loss of income<br>Rs.12,000/ -50% x 12x11 | Rs.7,92,000/-   |
| Loss of love and affection                    | Rs.<br>40,000/- |
| Pain and suffering                            | Rs.<br>10,000/- |
| Loss of expectation of<br>life                | Rs.<br>10,000/- |
| Transport charges                             | Rs.<br>5,000/-  |
| Funeral expenses                              | Rs.<br>15,000/- |
| Total                                         | Rs.8,72,000/-   |

5. Aggrieved by the impugned order, the appellants/claimants have filed the present appeal for enhancement of compensation.

6. The learned counsel for the appellants submits that the deceased Hari Narayanan was studying III Year Engineering Student and had secured very good marks in the semesters exams in which he had appeared before the accident. The Tribunal erred in coming to the conclusion that the deceased would have contributed to the appellants only a sum of Rs.6,000/- . He further submits that the deceased was aged about 20 years at the time of accident and also the Tribunal erred in fixing the multiplier of 11 instead of 18. The appellants submit that they are entitled to enhanced compensation towards loss of parental consortium, loss of love and affection of their deceased son Hari Narayanan. The Tribunal has not awarded any compensation towards future prospects and prayed for modification in the award passed by the Tribunal.

7. The learned counsel for the 3<sup>rd</sup> respondent-Insurance Company submits that the impugned Judgment and Decree is in order and requires no interference.

8. I have considered the arguments advanced by the learned counsel for the appellants and the 3<sup>rd</sup> respondent Insurance Company. I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

9. It is noticed that as per the decision of the Hon'ble Supreme Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier to be applied the multiplier 18 and therefore the amount awarded towards loss of income is to be modified. Similarly the appellants are entitled for future prospects as per the decision of the Hon'ble supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680. It is to be 40% of the notional income of the deceased. As per another decision of the Hon'ble Supreme Court reported in Magma General Insurance Company Ltd. vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130, it has been held that "Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit."

10. The Court further held as follows:-

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under the "loss of consortium" as laid down in Pranay

Sethi. In the present case, we deem it appropriate to award the father and sister of the deceased, an amount of Rs.40,000/- each for loss of filial consortium.

11. In the light of the above discussion, the amount awarded by the Tribunal towards loss of dependency is enhanced to Rs.18,14,400/- {Rs.12,000/- - 50% + 40%) X 12 X 18}. The Tribunal has awarded a meagre sum of Rs.20,000/- each towards loss of love and affection to the appellants and the same is hereby enhanced to Rs.40,000/- each. The amounts awarded by the Tribunal under other heads are just and reasonable and are therefore confirmed. Thus, the compensation awarded by the Tribunal is re-quantified as follows:-

|                                                                 |                |                |
|-----------------------------------------------------------------|----------------|----------------|
| Loss of earning capacity                                        |                |                |
| i) Income per month                                             | Rs.12,000/-    |                |
| ii) Less 50% of the loss of income<br>(12,000 x 50/100)         | Rs. 6,000/-    |                |
|                                                                 | Rs. 6,000/-    |                |
| iii) Add future prospects 40% (6,000 x 40%)                     | Rs. 2,400/-    |                |
|                                                                 | Rs. 8,400/-    |                |
| iv) loss of income for 12 months<br>(8,400 x 12)                | Rs.1,00,800/-  |                |
| v) loss of income applying multiplier of 18<br>(1,00,800 x 18)  | Rs.18,14,400/- | Rs.18,14,400/- |
| Loss of love and affection to the appellants<br>(Rs.40,000 x 2) |                | Rs. 80,000/-   |
| Funeral expenses                                                |                | Rs. 15,000/-   |
| Pain and sufferings                                             |                | Rs. 10,000/-   |
| Transportation                                                  |                | Rs. 5,000/-    |
| Loss of estate                                                  |                | Rs. 15,000/-   |

|                             |                                                               |
|-----------------------------|---------------------------------------------------------------|
| Loss of expectation of life | Rs.<br>10,000/-                                               |
| Total                       | Rs.19,49,400<br>/-<br>rounded off<br>to<br>Rs.19,50,000<br>/- |

12. Accordingly, this civil miscellaneous appeal is partly allowed and the compensation amount awarded by the Tribunal at Rs.8,72,000/- is hereby enhanced to Rs.19,50,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation.

13. The 3<sup>rd</sup> respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less if any amount already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment.

14. On such deposit, the appellants are permitted to withdraw the award amount equally along with proportionate interest and costs, by filing suitable application before the Tribunal, less the amount if any, already withdrawn. No costs.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

kkd/jen

To:

Motor Accident Claims Tribunal  
(Chief Judge, Court of Small Causes)  
Chennai.

+1 CC to Mr.M.Swamikkannu, Advocate sr 26262.

+1 CC to Mr.S.Vadivel, Advocate sr 26432.

C.M.A.No.2297 of 2012

BS (CO)

SP (26/04/2021)