



C.M.A. Nos.1495 & 2584 of 2018
& 4444 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

C.M.A.Nos.1495 & 2584 of 2018
and C.M.P.Nos.11870 & 19600 of 2018
and C.M.A.No.4444 of 2019

C.M.A.No.1495 of 2018

The Divisional Manager,
National Insurance Co. Ltd.,
Goa.

.. Appellant

Vs.

1.P.Vijaya
2.K.Parthiban
3.P.Balasubramanian
4.Vithal Yeshwanth Naik
5.Anthony Rodrigues
6.The Divisional Manager,
United India Insurance Company Ltd.,
Panjim, Goa.
(R4 & R5 remained exparte before the Tribunal.
Hence notice is dispensed with.)

.. Respondents



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C.M.A.No.4444 of 2019

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1.P.Vijaya
2.K.Parthiban
3.P.Balasubramanian

.. Appellants

Vs.

1.Vithal Yeshwanth Naik
2.The Divisional Manager,
National Insurance Co. Ltd.,
Goa.
3.Anthony Rodrigues
(R1 & R3 remained exparte before the Tribunal.
Hence notice is dispensed with.)
4.The Divisional Manager,
United India Insurance Company Ltd.,
Panjim, Goa.

.. Respondents

Prayer in C.M.A.Nos.1495/2018 & 4444/2019: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.11.2015, made in M.C.O.P. No.106 of 2013, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Tiruvannamalai.



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(In C.M.A.No.1495/2018)

For Appellant : Mr.S.Vadivel
For RR1 to 3 : Ms.A.Subadra
for M/s.M.Malar
For RR4 to 6 : No appearance

(In C.M.A.No.4444/2019)

For Appellants : Ms.A.Subadra
for M/s.M.Malar
For R2 : Mr.S.Vadivel
For R4 : Mr.S.Arunkumar

C.M.A.No.2584 of 2018

The Divisional Manager,
National Insurance Co. Ltd.,
Pondicherry.

.. Appellant

Vs.

1.Dhanaselvan

2.Vithal Yeshwanth Naik



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3. Anthony Rodrigues

4. The Divisional Manager,
United India Insurance Company Ltd.,
Nethaji Road, Cuddalore.

.. Respondents

(R2 & R3 remained exparte before the Tribunal.
Hence notice is dispensed with.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.10.2014, made in M.C.O.P. No.494 of 2009, on the file of the I Additional Sub Court, (Motor Accident Claims Tribunal), Cuddalore.

(In C.M.A.No.2584/2018)

For Appellant : Mr.S.Vadivel

For R1 : No appearance

For R3 : No appearance

For R4 : Mr.S.Arunkumar

COMMON JUDGMENT

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

C.M.A.No.1495 of 2018 has been filed by the appellant-Insurance



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Company against the judgment and decree dated 16.11.2015, made in M.C.O.P. No.106 of 2013, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Tiruvannamalai. Seeking enhancement of the compensation granted by the Tribunal in the above said award, the claimants have come out with C.M.A.No.4444 of 2019.

C.M.A.No.2584 of 2018 has been filed by the appellant-Insurance Company against the judgment and decree dated 10.10.2014, made in M.C.O.P. No.494 of 2009, on the file of the I Additional Sub Court, (Motor Accident Claims Tribunal), Cuddalore.

2.All the appeals arise out of the same accident and hence, disposed of by this common judgment.

3.For the sake of convenience, the parties are referred to as per their rank in their respective claim petitions.



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4(i).Originally, the claimants in M.C.O.P.No.106 of 2013 filed M.C.O.P.No.346 of 2009 on the file of the District and Sessions Judge, Tiruvannamalai, claiming a sum of Rs.50,00,000/- as compensation for the death of one P.Velumani, who died in the accident that took place on 03.10.2008. The said M.C.O.P.No.346 of 2009 was transferred to the file of the Special Sub Court, (Motor Accident Claims Tribunal), Tiruvannamalai and renumbered as M.C.O.P.No.106 of 2013.

4(ii).The claimant in M.C.O.P.No.494 of 2009, filed the said claim petition on the file of the I Additional Sub Court, (Motor Accident Claims Tribunal), Cuddalore, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the same accident.

5.According to the claimants/claimant, on the date of accident, at about 04.35 p.m, when the deceased P.Velumani was traveling in a Motorcycle bearing Registration No.GA-01-T-7405 owned by the 3rd respondent along with his friend Dhanaselvam/claimant in M.C.O.P.No.494 of 2009 near



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Saligao turn in Goa, the driver of the Maruti Van bearing Registration No.GA-06-T-0553 owned by the 1st respondent drove the same in a rash and negligent manner in the opposite direction and dashed against the Motorcycle driven by said P.Velumani and caused the accident. The accident has occurred only due to rash and negligent driving by driver of the Maruti Van owned by the 1st respondent. In the accident, the said P.Velumani sustained multiple injuries all over his body and died on the spot and Dhanaselvam sustained severe injuries. Hence, legal heirs of the deceased P.Velumani filed M.C.O.P.No.106 of 2013 and Dhanaselvan filed M.C.O.P.No.494 of 2009, claiming compensation against the respondents 1 and 2 as owner and insurer of the Maruti Van respectively and respondents 3 and 4 as owner and insurer of the Motorcycle respectively.

6.The respondents 1 and 3, owners of the Maruti Van and Motorcycle, remained exparte before the Tribunal in both the claim petitions.

7(i).In M.C.O.P.No.494 of 2009, the 2nd respondent, insurer of the



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Maruti Van, filed counter statement and denied all the averments made by the claimant, including the manner and occurrence of accident. According to the 2nd respondent-Insurance Company, when the driver of the Maruti Van drove the same at moderate speed observing all the traffic rules and regulations, the deceased P.Velumani rode the Motorcycle in a rash and negligent manner, dashed against the Maruti Van and caused the accident. The FIR was also registered against the rider of the Motorcycle owned by the 3rd respondent. Hence, the 2nd respondent/insurer of the Maruti Van is not liable to pay any compensation to the injured claimant. At the time of accident, the driver of the Maruti Van did not possess valid driving license to ply the vehicle and more persons traveled in the Maruti Van in violation of permit conditions. The claimant has to prove his age, avocation and income to claim compensation. In any event, the total compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.

7(ii).In M.C.O.P.No.106 of 2013, the 2nd respondent, insurer of the Maruti Van, filed counter statement and denied all the averments made by the



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claimants, including the manner and occurrence of accident and further stated that the claimants have to prove the manner of accident. At the time of accident, the driver of the Maruti Van did not possess valid driving license to ply the vehicle. The claimants have to prove the age, avocation and income of the deceased P.Velumani to claim compensation. In any event, the total compensation claimed by the claimants is excessive and prayed for dismissal of the claim petition. The 2nd respondent filed additional counter statement and submitted that as per the FIR marked as Ex.P1 by the claimants, the deceased P.Velumani himself drove the Motorcycle in a rash and negligent manner and dashed against the Maruti Van which was coming in the opposite direction and the deceased P.Velumani being the tort-feasor, the 2nd respondent/insurer of the Maruti Van is not liable to pay any compensation to the claimants and prayed for dismissal of the claim petitions as against the 2nd respondent.

8(i).In M.C.O.P.No.494 of 2009, the 4th respondent, insurer of the Motorcycle, filed separate counter statements and denied all the averments made by the claimant, including the manner and occurrence of accident.



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According to the 4th respondent-Insurance Company, the accident occurred only due to the rash and negligent riding of Motorcycle by the deceased P.Velumani. The claimant herein is not a resident of Cuddalore as claimed in the claim petition and he was employed at Chennai. The accident took place near Sangolda Slope, Goa State. He was also treated as a patient at Bamolim, Goa. Hence, the claim petition ought not to have been filed at Cuddalore. On this ground of jurisdiction, the claim petition is liable to be dismissed. In any event, the claimant has to prove his age, avocation and income, injuries sustained, treatment taken, disability suffered and medical expenses incurred to claim compensation. The total compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition.

8(ii).In M.C.O.P.No.106 of 2013, the 4th respondent, insurer of the Motorcycle, filed counter statement and denied all the averments made by the claimants, including the manner and occurrence of accident. According to the 4th respondent-Insurance Company, the deceased P.Velumani rode the Motorcycle in a rash and negligent manner and caused the accident. He did



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not possess valid driving license at the time of accident. Hence, the claimants are not liable to claim compensation from the 4th respondent/insurer of the Motorcycle. The claimants have to prove the age, avocation and income of the deceased P.Velumani to claim compensation. In any event, the total compensation claimed by the claimants is highly excessive and prayed for dismissal of the claim petition.

9(i).Before the I Additional Subordinate Judge, Cuddalore, in M.C.O.P.No.494 of 2009, the claimant examined himself as P.W.1 and examined Dr.Vijay Anand Thambaiiah, Orthopedic Surgeon as P.W.2 and marked 16 documents as Exs.P1 to P16. The 2nd respondent examined one P.Sivakumar as R.W.1, but did not mark any documents.

9(ii).Before the Special Subordinate Judge, Tiruvannamalai, in M.C.O.P.No.106 of 2013, the 1st claimant examined herself as P.W.1, examined one Chandrasekaran, eye-witness to the accident as P.W.2 and one G.Sankara Narayanan as P.W.3 and marked 22 documents as Exs.P1 to P22.



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The respondents examined one Annamalai, Junior Assistant in 2nd respondent as R.W.1 and marked 4 documents as Exs.R1 to R4.

10(i).The I Additional Subordinate Judge, Cuddalore, considering the pleadings, oral and documentary evidence in M.C.O.P.No.494 of 2009, held that the accident occurred due to negligent driving by both the driver of the Maruti Van owned by the 1st respondent as well as P.Velumani/rider of the Motorcycle and fixed liability in the ratio 50:50. The Tribunal awarded a sum of Rs.4,74,300/- as compensation to the claimant and directed the 2nd respondent as insurer of Maruti Van and 4th respondent as insurer of the Motorcycle to pay 50% each of the compensation awarded.

10(ii).The Special Subordinate Judge, Tiruvannamalai, considering the pleadings, oral and documentary evidence in M.C.O.P.No.106 of 2013, held that the accident occurred only due to rash and negligent driving by driver of the Maruti Van owned by the 1st respondent and directed the respondents 1 and 2 to jointly and severally pay a sum of Rs.18,85,000/- as compensation to



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the claimants.

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11. Against the judgment and decree dated 10.10.2014, made in M.C.O.P. Nos.494 of 2009 and judgment and decree dated 16.11.2015 made in M.C.O.P.No.106 of 2013, the 2nd respondent-Insurance Company have come out with C.M.A.Nos.2584 of 2018 and 1495 of 2018 respectively.

12. Not being satisfied with the amounts awarded by the Tribunal in M.C.O.P. No.106 of 2013, the claimants have come out with C.M.A.No.4444 of 2019.

C.M.A.No.2584 of 2018 [M.C.O.P.No.494 of 2009]

13. The learned counsel appearing for the 2nd respondent-Insurance Company, insurer of the Maruti Van, contended that the Tribunal failed to note the maintainability of the claim petition when admittedly the accident had occurred in the Goa State, as raised by the claimant and 4th respondent. The Tribunal erred in fixing 50% negligence on the part of the driver of the



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Maruti Van, overlooking Ex.P1 – FIR which was registered against the rider of the Motorcycle viz., P.Velumani and the evidence of claimant in cross-examination that FIR was registered against the rider of the Motorcycle owned by the 3rd respondent and insured with the 4th respondent. The Tribunal ought to have considered the contention of the 4th respondent-Insurance Company who has stated in their counter that accident occurred only due to the negligence of the rider of the Motorcycle and claimant who traveled as a pillion rider and dismissed the claim petition as against the 2nd respondent. The Tribunal without considering the evidence of P.W.1, R.W.1, counter statement and without giving elaborate finding with regard to negligence, erred in directly fixing 50% liability on each of the respondents 2 and 4. The Tribunal without considering the evidence of P.W.2 – Doctor, erroneously accepted the percentage of disability suffered by the claimant as 65% for the fracture of right hand distal bone and awarded excessive amount as compensation under different heads, which is exorbitant and against the medical guidelines. The total compensation awarded by the Tribunal is excessive and prayed for dismissal of claim petition and allowing the appeal.



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C.M.A.No.1495 of 2018 [M.C.O.P.No.106 of 2013]

14.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident occurred only due to the rash and negligent riding of Motorcycle by the deceased P.Velumani. Ex.P-1 FIR is also registered against the said P.Velumani. The Tribunal erred in relying on the evidence of P.W.2, who claims to have travelled in another Motorcycle 20 feet away from the Motorcycle driven by the deceased P.Velumani and witnessed the accident. The said P.W.2, eye-witness admitted in his cross-examination that he did not give any Police complaint and also the Police had not examined him. The Tribunal ought to have seen that P.W.2 who has stated that he was with the deceased for more than 3 days and he returned along with the body of the deceased, failed to give any Police complaint alleging negligence against the driver of the Maruti Van. The Tribunal failed to see that even the pillion rider Dhanaselvam/claimant in M.C.O.P.No.494 of 2009 also did not give any Police complaint as against the driver of the Maruti Van. The Tribunal ought to have seen that the accident had occurred in the opposite



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direction and P.W.2 had stated that he has seen the Maruti Van at the distance of 100 meters. In the said circumstances, the deceased would have avoided the accident, had he been diligent and careful. Hence, the deceased himself was the tort-feasor. The Tribunal failed to appreciate the oral evidence of R.W.1 and Exs.R1 to R4, especially Ex.R4 – the rough sketch. In an another claim petition in M.C.O.P.No.494 of 2009, filed by the pillion rider of the Motorcycle viz., Dhanaselvam, the Tribunal after full fledged trial, has held that both the rider of the Motorcycle and driver of the Maruti Van are equally responsible for the accident and fixed 50% negligence on each of them. As far as the quantum of compensation is concerned, the claimants failed to file any Income Tax return or bank statement of the deceased to prove his avocation and income. The Tribunal having found that the salary of the deceased was fluctuating and he was not in permanent employment, erred in fixing the monthly income at Rs.17,500/-. In any event, the 3rd claimant/brother of the deceased who was aged about 30 years is not a dependent of the deceased. The Tribunal erred in awarding compensation to the 3rd claimant. The total compensation awarded by the Tribunal is excessive and prayed for setting



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aside the award of the Tribunal and dismissal of C.M.A.No.4444 of 2019, filed by the claimants, seeking enhancement as the claimants have not made out any case for enhancement of the compensation.

C.M.A.No.4444 of 2019 [M.C.O.P.No.106 of 2013]

15.The learned counsel appearing for the claimants made submissions in support of the award of the Tribunal with regard to negligence fixed on the driver of the Maruti Van owned by the 2nd respondent. As far as the quantum of compensation awarded by the Tribunal is concerned, the learned counsel appearing for the claimants submitted that at the time of accident, the deceased P.Velumani was aged 28 years, working as an Assistant Engineer at Consolidated Construction Consortium Ltd., Chennai and was earning a sum of Rs.20,830/- per month. They have marked Exs.P12 and P13 to substantiate the same. P.W.3 in his evidence has deposed that the deceased P.Velumani was employed in the Company for a basic pay of Rs.3,548/- per month and gradually he was promoted and was earning a sum of Rs.20,803/- per month as Grade II Engineer at the time of accident. The Tribunal, without



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considering the materials on record, erroneously fixed only a sum of Rs.17,500/- per month as notional income of the deceased, stating that there was fluctuation in the monthly income of the deceased. The brother of the deceased was living separately from the family of the deceased and considering the fact that deceased was the only earning member of the family, the Tribunal ought not to have deducted 50% towards personal expenses of the deceased. The Tribunal failed to award any amount towards filial consortium, loss of estate, transportation, damages to cloth and articles and mental agony. The Tribunal ought to have awarded compensation under the heads funeral expenses and loss of love and affection separately to the claimants. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation and dismissal of C.M.A.No.1495 of 2018 filed by the 2nd respondent-Insurance Company.

C.M.A.No.1495 of 2018

16(i). Heard the learned counsel appearing for the appellant as well as the respondents 1 to 3 and perused the entire materials available on record.



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Though notice has been served on the respondents 4 to 6, there is no representation for them either in person or through counsel.

C.M.A.No.4444 of 2019

16(ii).Heard the learned counsel appearing for the appellants, 2nd respondent as well as the 4th respondent and perused the entire materials available on record.

C.M.A.No.2584 of 2018

16(iii).Heard the learned counsel appearing for the appellant as well as the 4th respondent and perused the entire materials available on record. Though notice has been served on the respondents 1 and 3, there is no representation for them either in person or through counsel.

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17.From the materials on record, it is seen that the claimants in M.C.O.P.No.106 of 2013 have filed the said claim petition claiming compensation for the death of the said P.Velumani, son of the claimants 1 and 2 and brother of the 3rd claimant. According to them, when the deceased



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P.Velumani was riding the Motorcycle near Saligoa turn in Goa, 1st respondent's Maruti Van coming in opposite direction, driven in a rash and negligent manner, dashed against the Motorcycle driven by the said P.Velumani and caused the accident. In the accident, said P.Velumani sustained multiple injuries all over his body and died on the spot. The accident occurred only due to the negligence of the driver of the Maruti Van. To substantiate their case, they examined one Chandrasekaran, eye-witness to the accident as P.W.2 and marked the FIR as Ex.P1. On the other hand, it is the case of the 2nd respondent-insurer of the Maruti Van that accident occurred only due to rash and negligent driving by said P.Velumani and not due to the driver of the Maruti Van. In support of their case, they examined one Annamalai, Junior Assistant in 2nd respondent-Insurance Company as R.W.1. The 2nd respondent-Insurance Company did not examine the driver of the Maruti Van or any other eye-witness. FIR is registered against the said P.Velumani, rider of the Motorcycle. From Ex.P1 – FIR, it is seen that FIR is registered based on the complaint given by one Sri Baburao Dessai, who is a Head Constable of Police. He is not an eye-witness and he lodged the



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complaint only based on the information he received. P.W.2, Chandrasekaran claims to be friend of the deceased P.Velumani and according to him, 4 persons including the deceased P.Velumani went to Goa for sight seeing. They hired two Motorcycles for sight seeing. According to P.W.2, the deceased P.Velumani was riding one Motorcycle with Dhanaselvan, the claimant in M.C.O.P.No.494 of 2009 in pillion. He and another person by name Balu were following the Motorcycle driven by the deceased P.Velumani in another Motorcycle. At that time, the Maruti Van dashed on the Motorcycle driven by the deceased P.Velumani and caused the accident. He deposed that he was 20 feet behind the Motorcycle driven by the deceased P.Velumani and saw the Maruti Van coming in the opposite direction when it was 100 feet ahead of their Motorcycle. He deposed that the accident occurred only due to rash and negligent driving by driver of the Maruti Van. This evidence has to be considered along with the evidence of Dhanaselvan/claimant in M.C.O.P.No.494 of 2009, who was the pillion rider in the Motorcycle driven by the deceased P.Velumani. In his evidence as P.W.1 in M.C.O.P.No.494 of 2009 filed by him claiming compensation for the injuries sustained by him in



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the accident, he has stated that the accident occurred due to rash and negligent driving by deceased P.Velumani as well as the driver of the Maruti Van. The evidence of Dhanaselvan/claimant in M.C.O.P.No.494 of 2009 has to be preferred as that of the evidence of Chandrasekaran/ P.W.2 in M.C.O.P.No.106 of 2013 for the simple reason that Dhanaselvan was riding in the pillion along with the deceased P.Velumani at close quarters. The claimants in M.C.O.P.No.106 of 2013, who are the legal heirs of deceased P.Velumani have not examined Dhanaselvan, who was the pillion rider along with deceased P.Velumani to prove the negligence on the part of the driver of the Maruti Van. The said Dhanaselvan was the best witness to prove the negligence. Considering the evidence of Dhanaselvan and failure on the part of the 2nd respondent-Insurance Company to let in any contra evidence, the award of the Tribunal dated 16.11.2015 made in M.C.O.P.No.106 of 2013 fixing entire negligence on the part of the driver of the Maruti Van is to be modified. Considering the entire materials, especially the evidence of Dhanaselvan/P.W.1 in M.C.O.P.No.494 of 2009, negligence is fixed equally on both the driver of the Maruti Van as well as on the rider of the Motorcycle



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viz., deceased P.Velumani. The deceased P.Velumani, rider of the Motorcycle was the tort-feasor. The contention of the learned counsel appearing for the 4th respondent-Insurance Company that the deceased P.Velumani is the tort-feasor and hence, the claimants in M.C.O.P.No.106 of 2013 are not entitled for 50% of the compensation has considerable force. Thus, the claimants in M.C.O.P.No.106 of 2013 are entitled to only 50% of the compensation payable by the 2nd respondent-Insurance Company.

C.M.A.No.2584 of 2018

18.As far as M.C.O.P.No.494 of 2009 is concerned, Dhanaselvan/claimant herein has categorically stated that the accident occurred only due to rash and negligent driving by both the driver of the Maruti Van as well as the rider of the Motorcycle viz., P.Velumani. The respondents have not let in any contra evidence to the evidence of P.W.1/the claimant herein who is the pillion rider of the Motorcycle. In view of the same, the award of the Tribunal fixing 50% negligence equally on both the driver of the Maruti Van as well as the rider of the Motorcycle viz., P.Velumani is not



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interfered with.

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C.M.A.No.4444 of 2019

19.As far as the quantum of compensation in M.C.O.P.No.106 of 2013 is concerned, it is the case of the claimants that the deceased P.Velumani was working as an Assistant Engineer in Consolidated Construction Consortium Ltd., and was earning a sum of Rs.20,830/- per month. They have marked Exs.P12 – salary particulars from the month of August 2005 to May 2007 and P13 - salary particulars from the month of September 2007 to October 2008 and examined P.W.3 - Manager of the said Company, who deposed to that effect. From Ex.P12, it is seen that the deceased P.Velumani was getting monthly salary ranging from Rs.3,548/- to 14,575/- and from Ex.P13, it is seen that his monthly income ranges from Rs.13,082/- to Rs.15,730/- and specifically for the month of September 2008, he was getting a sum of Rs.20,830/-. From Exs.P12 and P13, it is seen that during October 2007 and September 2008, he was given excess amount on other heads. In view of the same, the claimants are not entitled to fix the salary more than the amount



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fixed by the Tribunal. The Tribunal considering Exs.P12 and P13, fixed the average income of the deceased P.Velumani at Rs.17,500/- per month. Considering the nature of work and period of work, the monthly income fixed by the Tribunal is not excessive or meagre. The deceased P.Velumani was aged 28 years at the time of accident. The Tribunal having rightly applied the multiplier '17' following the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another]**, failed to grant any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]**, the claimants are entitled to 40% enhancement towards future prospects. The Tribunal has rightly deducted 50% towards personal expenses of the deceased, considering the fact that the deceased P.Velumani was a bachelor at the time of accident. Hence, fixing the monthly income at Rs.17,500/-, applying multiplier '17', granting 40% enhancement towards future prospects and deducting 50% towards personal expenses of the deceased, the amount awarded by the Tribunal towards loss of income is



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modified to Rs.24,99,000/- {Rs.17,500/- + Rs.7,000/- (40% of Rs.17,500/-)]
x 12 x 17 x 50%}. The consolidated sum of Rs.1,00,000/- erroneously granted
by the Tribunal towards funeral expenses and loss of love and affection is set
aside. The claimants 1 and 2 who are the parents of the deceased P.Velumani
are entitled to a sum of Rs.40,000/- each towards filial consortium. The 3rd
claimant who is the elder brother of the deceased is not entitled to any amount
towards loss of love and affection. The Tribunal failed to award any amount
towards loss of estate. The claimants are entitled to Rs.15,000/- each towards
loss of estate and funeral expenses. Thus, the compensation awarded by the
Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	17,85,000/-	24,99,000/-	Enhanced
2.	Funeral expenses and loss of love and affection	1,00,000/-	-	Set aside
3.	Funeral expenses	-	15,000/-	Granted
4.	Filial consortium to claimants 1 and 2	-	80,000/-	Granted



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5.	Loss of estate	-	15,000/-	Granted
	Total	18,85,000/-	26,09,000/-	Enhanced by 7,24,000/-

20. In the result,

(i) **C.M.A.Nos.1495 of 2018 and 4444 of 2019 are partly allowed** and the amount awarded by the Tribunal at Rs.18,85,000/- is enhanced to Rs.26,09,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit a sum of Rs.13,04,500/-, being 50% of the award amount now determined 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.106 of 2013. On such deposit, the claimants are permitted to withdraw the award amount now determined by this Court along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn by filing necessary applications before the Tribunal. The 2nd respondent-Insurance Company is permitted to withdraw



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the excess amount, lying in the credit of M.C.O.P. No. 106 of 2013, if the entire award amount has already been deposited by them. It is made clear that if the claimants have already withdrawn the entire award amount, the 2nd respondent-Insurance Company is not entitled to recover the same from the claimants. Consequently, connected Miscellaneous Petition is closed. No costs.

(ii) **C.M.A.No.2584 of 2018 is dismissed** and the amount awarded by the Tribunal at Rs.4,74,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The respondents 2 and 4 are each directed to deposit 50% of the award amount 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.494 of 2009. On such deposit, the claimant is permitted to withdraw the award amount along with interest and costs by filing necessary applications before the Tribunal. Consequently, connected



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Miscellaneous Petition is closed. No costs.

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(V.M.V., J) (S.S., J)
22.08.2022

gsa

To

- 1.The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Tiruvannamalai.
- 2.The Section Officer,
V.R Section,
High Court, Madras.



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C.M.A. Nos.1495 & 2584 of 2018
& 4444 of 2019

V.M.VELUMANI,J.
and
S.SOUNTHAR,J.

(gsa)

C.M.A.Nos.1495 & 2584 of 2018
and C.M.A.No.4444 of 2019

22.08.2022