



C.M.A. No.2273 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.2273 of 2021
and
C.M.P.No.6272 of 2022

1. Kandhaiah
2. Pushpakanni

...appellants

Vs.

1. Solairaj
2. National Insurance Company Limited,
Court Street, Tiruppur.

...respondents

**[1st respondent remained ex-parte before the Tribunal,
hence notice may be dispensed with for the
1st respondent in this appeal]**

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree dated 12.03.2018 made in MCOP.No.1147 of 2015 on the file of Motor Accidents Claims Tribunal/I Additional District Court, Tiruppur.

For appellants	: Mr.Ma.P.Thangavel
For respondents	
for R1	: Notice dispensed with
for R2	: Mr.J.Chandran



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J U D G M E N T

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]

This appeal has been filed by the claimants in MCOP.No.1147 of 2015 on the file of Motor Accidents Claims Tribunal/I Additional District Court, Tiruppur, seeking enhancement of compensation.

2. The appellants are the parents of the deceased Elangovan, who died in an accident that had occurred on 07.06.2015. According to them, the deceased was riding his motor-cycle bearing Registration No.TN-38-BD-7808 on the left extremity of the road. At that time, a pick-up Van bearing Registration No.TN-42-J-4565 came in a rash and negligent manner and rammed the motor-cycle. In the accident, the deceased sustained grievous injuries and he was taken to the Palladam Government Hospital and from there, he was referred to CMC Hospital, Coimbatore, where he died.

3. The appellants have pleaded that their deceased son was 35 years old at the time of the accident and he was working as a Management Representative in Accura Weldrods Kovai Pvt. Ltd. and earned Rs.25,000/- per month as salary. So they sought for a compensation of Rs.65,00,000/-.



4. The second respondent/Insurance Company contested the claim petition, specifically stating that the deceased himself had invited the accident, hence, no liability can be fastened on them. The Tribunal, based on the evidence of PW2, who is said to have witnessed the accident, held that the driver of the Van was responsible for the accident and awarded a compensation of Rs.10,30,800/-.

5. The learned counsel appearing for the appellants would argue that, to prove the employment, the appellants had produced the Identity Card issued by the employer of the deceased as Ex.P7, but they did not produce the salary and other relevant documents to show that the deceased was earning Rs.25,000/- per month. Hence, the Tribunal fixed the notional income at Rs.7,000/-. He further added that the appellants have now filed Bank Statement of the deceased from the year 2013 and also the Salary Certificate to prove the income of the deceased as additional evidence.

6. Per contra, the learned counsel appearing for the second respondent, Mr.J.Chandran submitted that in the case on hand, FIR was registered against the deceased and the final report was also filed stating that the case abated. Since the deceased was the tort-feasor, the Insurance



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Company cannot be mulcted with liability to pay compensation. He further added that the additional evidence should have been produced before the Tribunal to enable the Insurance Company to cross-examine the witness and no reason has been given by the appellants for marking additional documents at the appellate stage.

7. In reply, learned counsel appearing for the appellants submitted that, challenging the finding of the Tribunal with regard to negligence, the second respondent filed CMA.No.2066 of 2019, wherein also, this Court held that the accident had occurred due to the driver of the Van, therefore, it is not open to the second respondent to argue the case on negligence.

8. C.M.P.No.6272 of 2022 has been filed by the appellants to mark additional documents, which are Bank Statements and Salary Certificate of the deceased. The claimants had already produced I.D.Card of the deceased, which was marked as Ex.P7, but they failed to produce the Salary Certificate and Bank Statements of the deceased to show the income of the deceased. It is to be kept in mind that the Motor Vehicles Act is a beneficial legislation and for the failure of the claimants to produce necessary documents before the Tribunal, their interest should not suffer. Hence, to



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meet the ends of justice, C.M.P.No.6272 of 2022 is allowed and the Bank

Statement and the Salary Certificate are marked as Exs.P9 and P10.

9. Heard the rival submissions of the learned counsels appearing for the parties and perused the materials available on record.

10. In the matter on hand, the Tribunal as well as the learned Single Judge of this Court in CMA.No.2066 of 2019 have clearly held that the accident had occurred due to the negligence of the driver of the Van. So, this Court has to decide only on the quantum of compensation.

11. Perusal of the Bank Statement Ex.P9, shows that the deceased was working in the said Company since 2013 till he died on 07.06.2015. It further reveals that he was not paid fixed salary and in 2014, he was receiving salary between Rs.9,000/- and Rs.10,000/- per month. So we fix income of the deceased as Rs.10,000/- and add 40% towards future prospects. Hence, the total salary would be Rs.14,000/-. Since the deceased was a Bachelor, 50% is deducted towards his personal expenses, then the contribution amount comes to Rs.7,000/-. There is no dispute that the deceased died at the age of 35 years and the proper multiplier to be applied is 16, therefore, the Loss of Dependency is arrived at **Rs.13,44,000/-** [7,000



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12. As per the decision of the Apex Court in the case of ***Magma General Insurance Co. Ltd., vs. Nanu Ram and others reported in 2018 (1) TN MAC 452 (SC)***, the claimants are entitled to **Rs.80,000/-** towards Filial Consortium. The amounts awarded under the heads Loss of Love and Affection as well as Transport Expenses are set aside. The sum of **Rs.15,000/-** each awarded by the Tribunal under the heads Loss of Estate and Funeral Expenses, are confirmed. In total, the claimant is entitled to **Rs.14,54,000/-**. The enhanced compensation will carry interest at the rate of 6% per annum from the date of claim petition till the date of realisation. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

<i>S. No .</i>	<i>Heads under which amounts are awarded by the Tribunal</i>	<i>Amount awarded by the Tribunal in Rs.</i>	<i>Amount awarded by this Court in Rs.</i>
1.	Loss of Dependency	9,40,800	13,44,000
2.	Loss of Estate	15,000	15,000
3.	Loss of Love and Affection for petitioner	50,000	-
4.	Funeral Expenses	15,000	15,000
5.	Transport Expenses	10,000	-
6.	Filial Consortium	-	80,000



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S. No	Heads under which amounts are awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
	Total	10,30,800	14,54,000

13. The sum of Rs.10,30,800/- awarded by the Tribunal is enhanced to Rs.14,54,000/-. Out of the award amount, first claimant is entitled to Rs.4,54,000/- and the second claimant is entitled to Rs.10,00,000/-. The Insurance Company is directed to deposit the above modified award amount to the credit of the claim petition with proportionate 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. On such deposit, the claimants are permitted to withdraw their respective shares as apportioned above, less the amount already withdrawn, if any, together with proportionate interest and costs. The claimant shall pay necessary Court fee, if any on the enhanced compensation.

14. With the above directions, the appeal is partly allowed.
No costs. Consequently, connected miscellaneous petition is closed.

[M.K.K.S, J] [V.S.G., J]
07.04.2022



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Index : Yes / No
Speaking order: Yes/No
pvs

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To

1. The I Additional District Court,
Motor Accidents Claims Tribunal, Tiruppur
2. The Section Officer,
V.R.Section, High Court, Madras.



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