



WEB COPY



C.M.A.No.2905 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.06.2022

CORAM:

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

C.M.A.No.2905 of 2021

1. Usha

2. Prakash

... Appellants

Vs.

1. M/s. Tuticorin Sarvodaya Sangh,
K.V.K. Nagar,
Tuticorin District-628 002.
(R1 remained exparte before the Tribunal,
hence, notice to R1 has been dispensed with)

2. United India Insurance Company Limited
D.No.457, V.E.Road,
Tuticorin-628 002

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.04.2018 made in M.C.O.P.No.473 of 2014 on the file of Motor Accident Claims



C.M.A.No.2905 of 2021

Tribunal, Principal District Court, Namakkal.

WEB COPY

For Appellant : Mr. M. Lokesh,
for Mr. C.Ramaraj

For R2 : Mr.M.J.Vijayaraaghavan

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 11.04.2018 made in M.C.O.P.No.473 of 2014 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2. The appellants are claimants in M.C.O.P.No.473 of 2014 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal. They filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of their brother Devaraj, who died in the accident that took place on 29.11.2013.

3.The Tribunal considering the pleadings, oral and documentary



C.M.A.No.2905 of 2021

evidence, held that the accident occurred due to rash and negligent driving by the driver of Tempo Traveler belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said Tempo Traveler to pay a sum of Rs.8,86,800/- as compensation to the appellants.

4. Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellants submitted that the deceased was aged 29 years at the time of accident, he was working in a Textile Company in a packing section and was earning a sum of Rs.10,000/- per month. The Tribunal without considering the age and the nature of work done by the deceased, fixed only a meagre sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2013, the Tribunal ought to have fixed a sum of Rs.10,000/- as monthly income as claimed by the appellants. The Tribunal has not awarded any amount towards loss of love and affection. The amounts awarded by the Tribunal under



C.M.A.No.2905 of 2021

different heads are meagre and prayed for enhancement of compensation.

WEB COPY

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants have not filed any document with regard to avocation and income of the deceased. In the absence of any material with regard to avocation and income of the deceased, the Tribunal rightly fixed a sum of Rs.6,000/- per month as notional income of the deceased, which is excessive. The Tribunal, after considering all the materials on record, has awarded compensation, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.The 1st respondent remained exparte before the Tribunal and hence, notice to the 1st respondent is dispensed with.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials available on record.

9.It is the contention of the appellants that the deceased was working in



C.M.A.No.2905 of 2021

a packing section in a Textile Company at Karur at the time of accident and was earning a sum of Rs.10,000/- per month. The appellants did not file any documents to prove the avocation and income of the deceased. The Tribunal, in the absence of any evidence with regard to avocation and income of the deceased, fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2013 and the notional income fixed by the Tribunal is meagre. Considering the age and nature of work done by the deceased, a sum of Rs.8,000/- per month is fixed as notional income of the deceased. As per Ex.P2/Post-mortem certificate, the deceased was aged 29 years at the time of accident. The Tribunal, following the judgments of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]** and **2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another)**, has rightly granted 40% enhancement towards future prospects and applied multiplier '17'. The deceased died as bachelor and the Tribunal has rightly deducted 50% towards personal expenses of the deceased. Thus, by fixing Rs.8,000/- as monthly income of the deceased, the compensation awarded by the Tribunal towards loss of dependency is modified to



C.M.A.No.2905 of 2021

Rs.11,42,400/- (Rs.8,000/- + 3200 [Rs.8,000/- X 40%] X 12 X 17 X 1/2).

The Tribunal has not awarded any amount towards loss of love and affection to the appellants and hence, a sum of Rs.40,000/- is awarded towards loss of love and affection. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed.

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 or reduced
1.	Loss of dependency	8,56,800	11,42,400	Enhanced
2.	Loss of estate	15,000	15,000	Confirmed
3.	Funeral expenses	15,000	15,000	Confirmed
4.	Loss of love and affection	-	40,000	Granted
	Total	8,86,800	12,12,400	Enhanced by Rs.3,25,600/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and



C.M.A.No.2905 of 2021

the compensation awarded by the Tribunal at Rs.8,86,800/- is hereby enhanced to Rs.12,12,400/- (Rupees Twelve Lakhs Twelve Thousand and Four Hundred only) 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 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. On such deposit, the appellants are permitted to withdraw their share of the award amount on the basis of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn. The appellants are directed to pay the necessary Court fee on the enhanced award amount as per the order of this Court dated 11.08.2021 made in C.M.P.No.12449 of 2021 in C.M.A.SR.No.61331 of 2021. No costs.

(V.M.V., J) (S.S., J)
15.06.2022

Index : Yes / No
mrp

V.M.VELUMANI,J.



WEB COPY



C.M.A.No.2905 of 2021

and
S.SOUNTHAR,J.

mrp

To

1. The Principal District Judge
Motor Accident Claims Tribunal,
Principal District Court,
Namakkal.

- 2.The Section Officer
VR Section
High Court
Madras.

C.M.A.No.2905 of 2021

15.06.2022