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C.M.A. No.2560 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2022

CORAM:

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

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1.Muthulakshmi  
2.Paramasivam  
3.Vijaya (Minor)  
(Minor rep. By her mother Muthulakshmi) .. Appellants

Vs.

1.C.Velu  
(R1 remained exparte before the Tribunal.  
Hence notice is dispensed with.)

2.The New India Assurance Co. Ltd.,  
Motor Third Party Claims,  
No.232, Bombay Mutual Building,  
6<sup>th</sup> Floor, N.S.C. Bose Road,  
Chennai 600 001. .. Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.10.2020, made



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in M.C.O.P. No.2984 of 2018, on the file of the Special Sub Court No.1,  
(Motor Accident Claims Tribunal) Small Causes Court, Chennai.

For Appellant : Mrs.A.Subadra  
for Ms.M.Malar

For R2 : Mr.M.Krishnamoorthy

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

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

This appeal has been filed for enhancement of compensation granted by the award dated 28.10.2020, made in M.C.O.P. No.2984 of 2018, on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal) Small Causes Court, Chennai.

2.The appellants-claimants filed M.C.O.P. No.2984 of 2018, on the file of the Special Sub Court No.1, (Motor Accident Claims Tribunal) Small Causes Court, Chennai, claiming a sum of Rs.75,00,000/- as compensation for the death of one Isakki @ Esakkipandi, who died in the accident that took place on 05.04.2018.





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month as notional income of the deceased and awarded compensation towards loss of dependency. The Tribunal failed to award any amount under the head of damages, parental consortium and mental agony. The amounts awarded by the Tribunal towards loss of dependency, loss of love and affection, loss of estate, transport expenses and funeral expenses are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that the appellant did not file any document to prove the avocation and income of the deceased. The Tribunal, in the absence of any documentary evidence to prove the avocation and income of the deceased, fixed a sum of Rs.10,000/- per month as notional income of the deceased, which is not meagre. On the other hand, the amount awarded by the Tribunal towards loss of love and affection to the appellants is excessive. The compensation awarded by the Tribunal under different heads are not meagre. The appellants have not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.



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WEB COPY 7. Heard learned counsel appearing for the appellants as well as the 2<sup>nd</sup> respondent-Insurance Company and perused the materials available on record.

8. From the materials on record, it is seen that it is the contention of the appellants that at the time of accident, the deceased was aged 22 years, working as a Driver under one Arumugam, who was a whole sale and retailer of Chicken Shop and was earning a sum of Rs.25,000/- per month, along with Rs.300/- batta per day. The appellants have marked the driving license of the deceased as Ex.P4 to prove his avocation. In the absence of any oral and documentary evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the deceased. The accident is of the year 2018. Considering the year of accident and nature of work done by the deceased, a sum of Rs.14,000/- per month is fixed as notional income of the deceased. The Tribunal, following the judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC)**



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*[National Insurance Co. Ltd., Vs. Pranay Sethi and others]* and 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]**, rightly granted 40% enhancement towards future prospects and

applied the correct multiplier '18'. The deceased died as bachelor. Hence,

deducting  $\frac{1}{2}$  towards personal expenses of the deceased, the amounts awarded

by the Tribunal towards loss of dependency is modified to Rs.21,16,800/-

{[Rs.14,000/- + Rs.5,600/- (40% of Rs.14,000/-)] x 12 x 18 x  $\frac{1}{2}$ }. The

Tribunal has excessively awarded a sum of Rs.1,00,000/- towards loss of love

and affection. The same is reduced to Rs.80,000/-. The amounts awarded by

the Tribunal under 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 |
|-------|----------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Loss of dependency         | 15,12,000/-                     | 21,16,800/-                       | Enhanced                               |
| 2.    | Loss of love and affection | 1,00,000/-                      | 80,000/-                          | Reduced                                |
| 3.    | Loss of estate             | 15,000/-                        | 15,000/-                          | Confirmed                              |



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|    |                   |                    |                    |                                      |
|----|-------------------|--------------------|--------------------|--------------------------------------|
| 4. | Transport charges | 5,000/-            | 5,000/-            | Confirmed                            |
| 5. | Funeral expenses  | 15,000/-           | 15,000/-           | Confirmed                            |
|    | <b>Total</b>      | <b>16,47,000/-</b> | <b>22,31,800/-</b> | <b>Enhanced by<br/>Rs.5,84,800/-</b> |

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.16,47,000/- is enhanced to Rs.22,31,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2<sup>nd</sup> respondent-Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, 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.2984 of 2018. On such deposit, the appellants 1 and 2 are permitted to withdraw their share of 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 share of the minor 3<sup>rd</sup> appellant is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1<sup>st</sup> appellant, mother of the minor 3<sup>rd</sup> appellant is permitted to withdraw the



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accrued interest, once in three months for the welfare of the minor 3<sup>rd</sup> appellant. The appellants are directed to pay the necessary court fee on the enhanced award amount as per the order of this Court dated 17.08.2021 made in C.M.P.No.12824 of 2021 in C.M.A.SR.66015 of 2021. No costs.

**(V.M.V., J) (S.S., J)**  
10.06.2022

gsa

To

- 1.The Special Subordinate Judge No.1,  
(Motor Accident Claims Tribunal),  
Small Causes Court, Chennai.
- 2.The Section Officer,  
V.R Section,  
High Court, Madras.



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

(gsa)

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