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C.M.A.No.2431 of 2014 &
C.M.A.No.3530 of 2014

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 28.09.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2431 of 2014

and

C.M.A.No.3530 of 2014

and

M.P.Nos. 1 + 1 of 2014

C.M.A.No.2431 of 2014:

The Divisional Manger,
The New India Assurance Company Limited,
No.42, Big Street,
Tiruvannamalai.

... 2nd respondent/Appellant

Vs.

1.Uma

2.Minor Praveena

3.Minor Hemapriya

...Petitioners/ Respondents 1 to 3

(Minors 2 and 3 are represented by their natural guardian mother 1st appellant)



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4.Selvi ...1st respondent/4th respondent

5.Sivakumar

6.The Divisional Manager,
National Insurance Company Limited,
No.19, Officers Lane,
Vellore. ...4th respondent/6th respondent

7.Devagi ...5th respondent/7th respondent

C.M.A.No.3530 of 2014:

1.Uma
2.Minor Praveena
3.Minor Hemapriya ...Petitioners/ Appellants

(Minors 2 and 3 are represented by their natural guardian mother 1st appellant)

Vs.

1.Selvi

2.The Divisional Manger,
The New India Assurance Company Limited,
No.42, Big Street,
Tiruvannamalai.



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3.Sivakumar

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4.The Divisional Manager,
National Insurance Company Limited,
No.19, Officers Lane,
Vellore.

5.Devagi

... Respondents/Respondents

Prayer in C.M.A.No.2431 of 2014: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 24.09.2012 in M.C.O.P.No.990 of 2008 on the file of the learned District Judge, Motor Accidents Claims Tribunal, Tiruvannamalai.

Prayer in C.M.A.No.3530 of 2014: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 24.09.2012 in M.C.O.P.No.990 of 2008 on the file of the learned District Judge, Motor Accidents Claims Tribunal, Tiruvannamalai.

For Appellants : Mr.R.Neethe Perumal
in C.M.A.No.2431 of 2014



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Mr.F.Terry Chella Raja
in C.M.A.No.3530 of 2014

For Respondents : Mr.F.Terry Chella Raja for R1
in C.M.A.No.2431 of 2014

R2 and R3 – minors rep. By R1
in C.M.A.No.2431 of 2014

Mr.S.Vadivel for R6
in C.M.A.No.2431 of 2014

Mr.R.Neethe Perumal for R2
in C.M.A.No.3530 of 2014

Mr.S.Vadivel for R4
in C.M.A.No.3530 of 2014

COMMON JUDGMENT

The Insurance Company has filed C.M.A.No.2431 of 2014 challenging the Award passed in M.C.O.P.No.990 of 2008 on the file of the learned District Judge, Motor Accidents Claims Tribunal, Tiruvannamalai. The claimant has filed C.M.A.No.3530 of 2014 seeking an enhancement of compensation.



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2.The Insurance Company is aggrieved by the fact that though the deceased Thirumoorthy, who was riding a two wheeler, bearing Registration No.TN 25H 9418, owned by the 3rd respondent, had also contributed to the accident the Tribunal has not fastened any liability on him. The wife of the deceased and the minor children on the other hand have filed the appeal for enhancement of compensation. The parties are referred to in the same array as before the Tribunal.

3.From a perusal of the records, it is seen that the deceased Thirumoorthy was riding his two wheeler and proceeding behind the lorry the driver of the lorry had suddenly applied brakes and the two wheeler coming right behind had dashed against the lorry, as a result of which, the accident had occurred. The 2nd respondent would



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however contend that the lorry was stationary and not in movement as claimed by the petitioner.

4.As argued by the learned counsel for the appellant if the deceased had maintained the mandatory distance between the accident would not occur. Therefore, contributory negligence has to necessarily be fastened on the deceased and accordingly a contributory negligence of 10% is fastened on the deceased. The petitioners are aggrieved by the fact that the Tribunal has only taken a notional income of Rs.3,000/- and has not granted any amount towards future prospects. The accident is of the year 2007 and the deceased Thirumoorthy was aged about 35 years. He is stated to be the owner of the Medical shop, however, no proof of the same has been filed. Therefore, the notional income of Rs.4,500/- which has been arrived at appears to be reasonable. The Tribunal has not granted any amount towards future



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prospects. Therefore, without modifying the notional income arrived at by the Tribunal, 40% future prospects shall be added to it. Therefore, the monthly notional income works out at a sum of Rs.6,300/-(Rs.4,500/- x 40% = Rs.6,300/-). The annual income would be a sum of Rs.75,600/-. Out of this, 1/4th has to be deducted towards personal expenses. Therefore, a sum of Rs.56,700/- will be available to the family. The age of the deceased is 35 years, the appropriate multiplier is 16 and not 17 as fixed by the Tribunal. Therefore, the loss of earning would be a sum of Rs.9,07,200/-. Further, the 1st claimant is entitled to a sum of Rs.40,000/- towards loss of consortium as against a sum of Rs.25,000/- fixed by the Tribunal. The petitioners 2 and 3 and 5th respondents who are the children and mother of the deceased, respectively are entitled to a sum of Rs.40,000/- each under the head of loss of love and affection. Therefore, the amounts under this head is enhanced to a sum of Rs.1,20,000/- instead of Rs.30,000/- . A sum of Rs.15,000/- is granted under the head of funeral expenses



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and further a sum of Rs.15,000/- is granted under the head of loss of estate. Further, a sum of Rs.1,000/- granted by the Tribunal under the head of damages to cloth and articles and a sum of Rs.10,000/- granted under the head of

transportation are set aside. Therefore, taking into consideration the above aspects, the modified amount is 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 earnings	Rs.6,12,000/-	Rs.9,07,200/-	Enhanced
2.	Loss of consortium	Rs.25,000/-	Rs.40,000/-	Enhanced
3.	Loss of love and affection	Rs.30,000/-	Rs.1,20,000/-	Enhanced
4.	Funeral expenses	Rs.10,000/-	Rs.15,000/-	Enhanced
5.	Transportation	Rs.10,000/-	Deleted	Deleted



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
6.	Damages to cloth and articles	Rs.1,000/-	Deleted	Deleted
7.	Loss of estate	-	Rs.15,000/-	Enhanced
	Total	Rs.6,78,000 /-	Rs.10,97,200 /-	

The Insurance Company is liable to pay a sum of Rs.9,87,480/- being 90% of the liability fastened on them.

5.Accordingly, the appeal filed by the claimants in C.M.A.No.3530 of 2014 is partly allowed and the appeal filed by the Insurance Company is dismissed. The respondent/Insurance Company is directed to deposit the entire amount, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.No.990 of 2008 on the file of the learned District Judge, Motor Accidents Claims Tribunal, Tiruvannamalai, within a period of



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six weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit, the claimants are permitted to withdraw the entire award amount with proportionate accrued interest and costs as apportioned by the Tribunal, by making necessary applications.

6.The share of the minors/2 and 3 claimants shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors/2 and 3 claimants shall be paid to the mother of the minors, once in three months, till they attain majority.

The claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee



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has been produced by the claimants. No costs. Consequently,
connected Miscellaneous Petitions are closed.

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Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The District Judge,
Motor Accidents Claims Tribunal,
Tiruvannamalai.



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P.T. ASHA, J,

mps

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M.P.Nos. 1 + 1 of 2014

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