



C.M.A.No.3210 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

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1.R.Shobana
2.Minor C.Hanshika
3.Minor C.Devanth
(Minors rep. by their mother and
next friend, 1st appellant)
4.S.Munirathinam

.. Appellants

Vs.

1.A.Saravanan
2.Royal Sundaram Alliance Insurance Co. Ltd.,
“Subramanian Building”,
First Floor, No.1, Club Road,
Chennai 600 002.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.04.2021, made



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in M.C.O.P. No.95 of 2017, on the file of the Special Sub Court No.I, II Court
of Small Causes Court (FAC), (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr.P.A.Arvinth Viveks
for M/s.V.L.Akshai Sajin Kumar

For R2 : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed by the appellants-claimants seeking enhancement of the compensation granted by the Tribunal in the award dated 15.04.2021, made in M.C.O.P. No.95 of 2017, on the file of the Special Sub Court No.I, II Court of Small Causes Court (FAC), (Motor Accident Claims Tribunal), Chennai.

2.The appellants/claimants filed M.C.O.P. No.95 of 2017, on the file of the Special Sub Court No.I, II Court of Small Causes Court (FAC), (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.1,00,00,000/- as



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compensation for the death of one M.Chandramohan, who died in the accident that took place on 13.09.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Tavera Car owned by the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.24,68,000/- 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.

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased Kumar was aged 37 years, working as a Manager in the Grand Ocyana Beach Resort and was earning a sum of Rs.31,000/- per month. The Tribunal without considering the salary certificate



marked as Ex.P6, fixed only a meagre sum of Rs.12,000/- as notional income of the deceased holding that the appellants did not examine the employer of the deceased. Considering the age and nature of work done by the deceased, the Tribunal ought to have granted 60% enhancement towards future prospects instead of granting only 40%. The amounts awarded by the Tribunal towards loss of consortium and loss of love and affection to the appellants are meagre. The Tribunal without considering Ex.P2 – Post Mortem Certificate issued by Chengalpattu Medical College Hospital and the death report which shows that the deceased M.Chandramohan died out of head injury and would have undergone pain and sufferings, failed to award any amount towards pain and suffering. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent- Insurance Company contended that the Tribunal taking into consideration the fact that employer of the deceased M.Chandramohan and author of the salary



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certificate are not examined, did not accept the contention of the appellants that the deceased was earning a sum of Rs.31,000/- per month and fixed a sum of Rs.12,000/- per month as notional income of the deceased, which is not meagre. The amounts 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.

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

8.From the materials on record, it is seen that it is the case of the appellants that at the time of accident, the deceased M.Chandramohan was working as a Manager in M/s.The Grand Ocyana Beach Resort, Kanchipuram District and was earning a sum of Rs.31,000/- per month. To prove the same, they have marked Ex.P6 – Salary certificate, but failed to examine the author of



the document or employer of the deceased. In the absence of any evidence on the part of the appellants and bank statement, the Tribunal considering the nature of work done by the deceased M.Chandramohan, fixed a sum of Rs.12,000/- per month as notional income of the deceased. The accident is of the year 2016. The notional income fixed by the Tribunal is meagre. Considering the year of accident and nature of work done by the deceased, it would be just to fix a sum of Rs.15,000/- per month as notional income of the deceased. The Tribunal, considering the Postmortem Certificate and death certificate marked as Exs.P2 & P3, fixed the age of the deceased as 37 years and 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)**, rightly granted 40% enhancement towards future prospects and applied the correct multiplier '15'. There are four dependants of the deceased and the Tribunal has rightly deducted 1/4th towards personal expenses. Hence, fixing the notional income of the deceased as



Rs.15,000/- per month, granting 40% enhancement towards future prospects, applying multiplier '15' and deducting 1/4th towards personal expenses of the deceased, the compensation awarded by the Tribunal towards loss of dependency is modified and enhanced to Rs.28,35,000/- {[Rs.15,000/- + Rs.6,000/- (40% of Rs.15,000/-)] x 12 x 15 x 3/4}. The Tribunal has excessively awarded a sum of Rs.1,25,000/- towards loss of love and affection to the appellants 2 to 4. Since the sum of Rs.5,000/- awarded by the Tribunal towards transportation expenses is meagre, the excessive amounts awarded towards loss of love and affection is not interfered with. 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	22,68,000/-	28,35,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed



3.	Loss of love and affection to appellants 2 to 4	1,25,000/-	1,25,000/-	Confirmed
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
6.	Transportation	5,000/-	5,000/-	Confirmed
	Total	24,68,000/-	30,35,000/-	Enhanced by Rs.5,67,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.24,68,000/- is enhanced to Rs.30,35,000/- 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 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.95 of 2017. On such deposit, the appellants 1 and 4 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



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applications before the Tribunal. The shares of the minor appellants 2 & 3 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st appellant, mother of the minor appellants 2 & 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 & 3. No costs.

(V.M.V., J) (S.M., J)
08.11.2022

Index : Yes/No
Speaking Order : Yes/No
(gsa)

To

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



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**V.M.VELUMANI, J.
and
SUNDER MOHAN, J.**

(gsa)

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