



C.M.A.No.2427 of 2022

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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 10.11.2022

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

C.M.A.No.2427 of 2022

1.Kavitha

2.A.Manisha

3.Danam

...Appellants

Vs

1.Z.Ambrish Khan

2.United India Insurance Co. Ltd.,  
Silingi Building, 4<sup>th</sup> Floor,  
No.134, Greams Road,  
Chennai – 600 006.

... Respondents



C.M.A.No.2427 of 2022

**Prayer:** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Decree dated 16.12.2021 made in M.C.O.P.No.3732 of 2019 on the file of the Motor Accident Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondent 2 : Mr.P.Sankaranarayanan

### **JUDGEMENT**

The petitioners before the Motor Accident Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai are the appellants before this Court. The appellants have filed the above claim petition seeking compensation for the death of one Aravinth in a road accident on 13.06.2019. The 1<sup>st</sup> appellant is the wife, the 2<sup>nd</sup> appellant is the minor daughter and the 3<sup>rd</sup> appellant, the mother of the deceased.



C.M.A.No.2427 of 2022

WEB COPY

2. Since the appeal has been filed seeking enhancement, I do not wish to traverse through the entire facts of the case, suffice it to state that the said Aravinth was stated to be a Supervisor of road contracts with one Somasekar, proprietor of M/s.Lotus Road Tec Systems.

3. It is the contention of the appellants that the deceased was earning a sum of Rs.28,000/- per month and since the accident had been caused only on account of the negligence of the driver of the 1<sup>st</sup> respondent's vehicle, which is insured with the 2<sup>nd</sup> respondent, they are bound to compensate the appellants. The appellants had claimed a compensation of a sum of Rs.60,00,000/-.

4. The 1<sup>st</sup> respondent had not contested the case and it was only the 2<sup>nd</sup> respondent Insurance Company, which had filed the counter denying the age, occupation and the income of the deceased and also the negligence on the part of the driver of the 1<sup>st</sup> respondent's vehicle.



C.M.A.No.2427 of 2022

WEB COPY

The 2<sup>nd</sup> respondent had taken a stand that the deceased had not died on account of the injury sustained by him in the road accident.

5. The Tribunal on going through the evidence on record had come to the conclusion that the accident had occurred only on account of the negligence on the part of the driver of the 1<sup>st</sup> respondent's vehicle. There is no appeal challenging the said finding.

6. As regards the quantum of compensation, the appellants had claimed that the deceased was aged about 43 years, the same has been confirmed in Ex.P.2, Post mortem certificate. The Tribunal had considered the fact that the appellants have not filed any document to show that the deceased was earning a sum of Rs.28,000/- per month and therefore notional income of a sum of Rs.10,000/- per month was fixed. The Tribunal has added 25% towards future prospects and deducted 1/3<sup>rd</sup> of the income towards the personal expenses of the

4/10



C.M.A.No.2427 of 2022

deceased.

WEB COPY

7. Considering the fact that the deceased was aged about 43 years multiplier of 14 was adopted. Ultimately, the Tribunal had arrived at a total compensation of a sum of Rs.15,50,000/-. Aggrieved by the same, the appellants are before this Court. The appellants are particularly aggrieved over the notional income that has been adopted by the Tribunal.

8. The learned counsel for the appellants would submit that there is no denial of the fact that he was working as a Supervisor of a road contract. A minimum salary of atleast Rs.13,000/- to 15,000/- would have been earned by the said deceased, therefore, the fixation of just a sum of Rs.10,000/- as notional income is very low.



C.M.A.No.2427 of 2022

WEB COPY

9. The learned counsel for the Insurance Company would submit that considering the fact that the appellants have not let in any evidence to prove the income, the sum of Rs.10,000/- fixed as notional income by the Tribunal appears to be reasonable and fair.

10. Heard the learned counsels and perused the records.

11. As rightly put by the learned counsel for the appellants, even a daily coolie would have earned atleast a sum of Rs.300/- to Rs.400/- per day. Therefore, the notional income can be fixed at a sum of Rs.12,500/-, to which 25% is added towards future prospects and appropriate multiplier to be adopted is 14 and  $1/3^{\text{rd}}$  has to be deducted towards personal expenses. Therefore, the award is modified as follows:

**Rs.15625 [12,500/- x 3,125 (25% FP)] x 12 x 14 x  $2/3$  =**

**Rs.17,50,000/-**

6/10



C.M.A.No.2427 of 2022

| <i><b>Heads</b></i>                   | <i><b>Award of the Tribunal</b></i> | <i><b>Award of the High Court</b></i>                     |
|---------------------------------------|-------------------------------------|-----------------------------------------------------------|
| <b>Pecuniary Loss of the deceased</b> | <b>Rs.14,00,000/-</b>               | <b>Rs.17,50,000/- (Enhanced)</b>                          |
| Loss of Estate                        | Rs.15,000/-                         | Rs.15,000/-                                               |
| Loss of Consortium                    | Rs.1,20,000/-                       | Rs.1,20,000/-                                             |
| Funeral Expenses                      | Rs.15,000/-                         | Rs.15,000/-                                               |
| Total                                 | Rs.15,50,000/-                      | <b>Rs.19,00,000/- together with interest at 7.5% p.a.</b> |

12. The Insurance Company is directed to deposit the enhanced award amount along with interest and costs, less the amount already deposited within a period of six weeks from the date of receipt of a copy of this Judgement, to the credit of M.C.O.P.No.3732 of 2019. On such deposit, the appellants are permitted to withdraw their respective share of the award amount, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by filing necessary application before the Tribunal. The appellants shall show proof of payment of



C.M.A.No.2427 of 2022

the Court fees for the enhanced award amount and only on such proof they shall be permitted to withdraw the amounts so deposited.

13. The share of the minor appellant, namely, the 2<sup>nd</sup> appellant is directed to be deposited in Fixed Deposit in any one of the Nationalised Banks till she attain majority. On such deposit, the 1<sup>st</sup> appellant being the mother of the minor appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor appellant.

14. In the result, the Civil Miscellaneous Appeal is allowed. No costs.

**10.11.2022**

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Index : Yes/No  
Speaking order/non-speaking order

8/10



*C.M.A.No.2427 of 2022*

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To,

The Motor Accident Claims Tribunal,  
(Chief Judge, Court of Small Causes),  
Chennai.



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*C.M.A.No.2427 of 2022*

**P.T.ASHA, J.,**

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**C.M.A.No.2427 of 2022**

**10.11.2022**

10/10