

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
12.04.2022	06.05.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.471 of 2012

1.Mariammal

2.Sankaran

3.Petchimuthu

[Appellants 2 and 3 are declared as major
and their mother is discharged from the
guardianship, vide order, dated 25.10.2019,
made in C.M.P(MD)No.8909 of 2019]

4.Sankaran Pillai

5.Minnadi Ammal

.. Appellants / Petitioners

Vs

1.M/s.Trans Trai India Ltd.,
Kumarikiri Village,
Tuthokudi.
[R1 was set ex parte vide order
dated 18.01.2018]

2.The Oriental Insurance Co. Ltd.,
through its Branch Manager,
No.4/555, 1st Floor,
Pollas Manson, Kalyani Road,
Near Andira Bank,
Ring Road, Kundur - 522 007,
State of Andhra Pradesh.

.. Respondents / Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act,
1988, against the award, dated 08.08.2011, passed in M.C.O.P.No.231
of 2011 by the Motor Accident Claims Tribunal / Fast Track Court
No.2, Tirunelveli.

For Appellant

: Mr.T.Selvakumaran

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondent No.2

: Mr.C.Jawahar Ravindran



JUDGMENT

This Civil Miscellaneous Appeal is directed against the award, dated 08.08.2011, passed in M.C.O.P.No.231 of 2011 by the Motor Accident Claims Tribunal / Fast Track Court No.2, Tirunelveli.

2.The claim petitioners are the appellants herein, seeking enhancement of compensation awarded in M.C.O.P.No.231 of 2011. The claim petitioners filed the claim petition in M.C.O.P.No.231 of 2011 for the death of Muthiyappan, who worked as a Security Assistant in ISS SDB Security Service Private Limited, Tuticorin and died in the road accident on 12.01.2011.

3.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

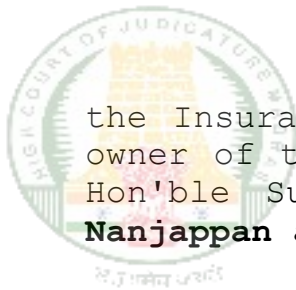
4.The claim petitioners filed the claim petition on the ground that on 12.01.2011, at about 07.30 p.m., the deceased was riding his bicycle from east to west on the Tirunelveli - Tuticorin Main Road near Mangalagiri. At that time, the lorry bearing Registration No.TN-69-AB-2134 belonging to the first respondent, insured with the second respondent, came from west to east in a high speed, rashly, negligently, gone to the wrong side and hit the deceased. As a result of which, the deceased sustained serious head injuries and immediately, he was taken to AVM Hospital at Tuticorin and on admission, he was declared as dead. A case under Sections 279 and 304-A IPC has been registered by the Pudukottai Police Station in Crime No.14 of 2011 against the first respondent driver.

5.During trial, the claim petitioners have examined P.W.1, P.W.2 and P.W.3 and marked Ex.P.1 to Ex.P.6. P.W.2 is the occurrence witness and P.W.3 is the Assistant Manager of the Security Service, through whom Ex.P.6 was marked. On the behalf of the respondents, R.W.1, R.W.2 and R.W.3 were examined and Ex.R.1 to Ex.R.5 were marked.

6.The Tribunal on consideration of both the oral and documentary evidence, has awarded a compensation of Rs.5,75,000/- after holding that the accident has taken place due to the rash and negligent driving of the driver of the first respondent lorry.

7.Heard the respective counsel for the parties.

8.During the course of arguments, the learned counsel for the appellants / claimants would contend that C.M.A(MD)No.564 of 2012 filed by the second respondent / Insurance Company was disposed of, on 11.11.2016, holding that the Insurance Company shall pay the compensation to the claimants at the first instance and thereafter,



the Insurance Company is at liberty to recover the amount from the owner of the vehicle as per the mode stated in the decision of the Hon'ble Supreme Court in **Oriental Insurance Company Limited Vs. Nanjappan and others** reported in (2004) 13 SCC 224.

9. Now the point for consideration is what is the just and reasonable award?

10. According to P.W.1, the deceased was working as an Assistant in the registered security service. In this connection, they examined P.W.3, Velu and marked Ex.P.6, wherein it is mentioned that the deceased was getting monthly income of Rs.3746 + 2830 and a deduction of Rs.199/- is made for the welfare fund and Rs.58/- is being deducted for insurance. As per the evidence of P.W.3, it was issued on behalf of the security service, where the deceased was employed. As per the statement, it is Rs.6576/-. Since the gross amount has to be taken into consideration, Rs.6,500/- is fixed as monthly salary. On the date of the accident, the deceased was aged about 38. Following the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi and Others** reported in 2017(16) SCC 680, since the deceased is aged about 38 years at the time of the accident, 40% has to be included towards future prospects and accordingly, the notional income of the deceased is fixed at Rs.9,100/-. As per the decision of the Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation**, reported in 2009(2) TN MAC 1 (SC), multiplier 15 is to be adopted. There are five dependants and hence, 1/3rd deduction has to be made. Accordingly, the pecuniary loss sustained by the claim petitioners is reassessed as under:

Calculation

Notional income	= Rs.6,500/-
40% Future Prospects	= Rs.2,600/-
Total	= Rs.6,500 + Rs.2,600 = Rs.9,100/-

Loss of dependency

= Rs.9,100 X 12 X 15 - 1/3 deduction
= Rs.10,92,000/-

11. Apart from the above amount, the first petitioner being the widow, is entitled for Rs.40,000/- towards filial consortium and the claim petitioners 2 to 5 each are entitled to Rs.40,000/- towards parental and accordingly, it comes to Rs.1,60,000/- [40000 x 4 = 1,60,000]. A sum of Rs.15,000/- is awarded towards funeral expenses. A sum of Rs.15,000/- is awarded towards loss of estate. Therefore, the total compensation comes to Rs.13,22,000/-. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.5,75,000/- to Rs.13,22,000/-, which shall carry interest at the rate of 7.5% per annum.



12.In the result, this Civil Miscellaneous Appeal is partly allowed. The quantum of compensation awarded by the Tribunal is enhanced from Rs.5,75,000/- to Rs.13,22,000/- which shall carry interest at the rate of 7.5% per annum. The appellants / claimants are directed to pay the Court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee. The second respondent / Insurance Company is directed to deposit the entire compensation of Rs.13,22,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.231 of 2011 on the file of the Motor Accident Claims Tribunal / Additional District Court (Fast Track Court No.2), Tirunelveli, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made by the second respondent / Insurance Company, the appellants / petitioners are at liberty to withdraw the same, after following due process of law. Since this Court, vide Judgment, dated 11.11.2016, made in C.M.A(MD)No.564 of 2012, ordered pay and recovery, the second respondent / Insurance Company is permitted to recover the amount from the owner of the vehicle viz., the 1st respondent herein, as per the decision of the Hon'ble Supreme Court in **Oriental Insurance Company Limited Vs. Nanjappan and others** reported in **(2004) 13 SCC 224**. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

smn

To

The Additional District Judge,
Motor Accident Claims Tribunal /
Additional District Court (Fast Track Court No.2),
Tirunelveli.

Copy To

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.T. SELVAKUMARAN, Advocate (SR-23566[F] dated
09/05/2022)

PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.471 of 2012

06.05.2022

MK/30.05.2022/4P/5C

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