

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

| Date of Reserving the Judgment | Date of Pronouncing the Judgment |
|--------------------------------|----------------------------------|
| 23.03.2022                     | 04.04.2022                       |

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CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN**

**C.M.A(MD)No.570 of 2019**

1.Kamaludeen  
2.Nazeerakani

... Appellants/Petitioners

Vs

1.Kameela Begam

2.Bharathi A.X.A.General Insurance Company Ltd.,  
Metro Plaza,  
162, Anna Salai,  
Chennai.

... Respondents/Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act praying to enhance the award amount in M.C.O.P.No.1234 of 2013 dated 28.03.2019 on the file of the Motor Accident Claim Tribunal/Special Sub Court, Thanjavur so far as they related to the quantum of compensation grated.

|               |                  |
|---------------|------------------|
| For Appellant | : Mr.N.Tamilmani |
| For R2        | : Mr.V.Sakthivel |
| For R1        | : No appearance  |

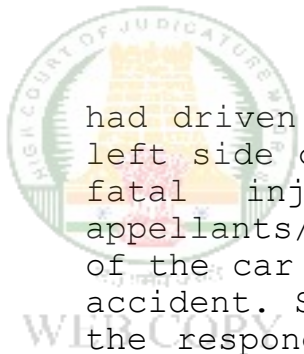
### **JUDGMENT**

The appellants are the claimants in M.C.O.P.No.1234 of 2013 on the file of the Special Sub Court, Motor Accidents Claims Tribunal, Thanjavur. They have filed the above claim petition seeking compensation of Rs.25,00,000/- for the death of one Mohamed Iliyas in a road accident that took place on 12.05.2013. The claimants are the parents of the deceased.

2. The brief case of the appellants/claimants is as follows:

(i) The deceased Mohamed Iliyas was aged 16 years and he was studying 10<sup>th</sup> standard on the date of the accident.

(ii) On 12.05.2013, at about 5.30 p.m., the deceased along with 7 others were travelling in the 1<sup>st</sup> respondent Sedan car bearing Registration No.TN-51-K-3605 from Kodaikanal in order to go to their village in Thanjavur to Trichy main Road. While the car was coming near Pudukkudi GB food oil company towards west to east, the driver



had driven the car in a rash and negligent manner and upset in the left side of the road, as a result of which, the deceased sustained fatal injuries and died on the spot. According to the appellants/claimants, the rash and negligent driving of the driver of the car bearing Registration No.TN-51-K-3605 was the cause of the accident. Since the car was insured with the second respondent, both the respondents 1 and 2, are jointly and severally liable to pay compensation of Rs.25,00,000/- to them.

3. The owner of the car remained absent before the Tribunal and therefore, he was set ex-parte. Bharathi AXA General Insurance Company contested the claim petition. The learned Tribunal, after analysing the evidence on record, concluded that the accident occurred due to the rash and negligent driving of the driver of the car and awarded a compensation of Rs.5,70,000/- together with interest at the rate of 7.5% per annum to the appellants/claimants. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.N.Tamilmani, learned counsel appearing for the appellants/claimants relied on the judgment in **C.M.A.No.565 of 2021** in the case of **M/s.Reliance General Insurance Company limited Vs. P.Poongavanam and others**, wherein, the learned Judge had awarded a sum of Rs.11,000/- towards monthly income for a student aged about 18 years, who died in a road accident that took place on 17.11.2015.

5. Per contra, Mr.V.Sakthivel, learned counsel appearing for the Insurance Company would contend that since, in the present case, the accident took place only in the year 2013, the compensation awarded by the Tribunal is just and reasonable.

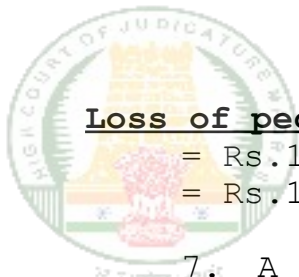
6. A perusal of the available records shows that the factum of the accident and the manner of the accident are not disputed by both the parties. This Court is of the considered view that the deceased was studying 10<sup>th</sup> Standard and as per the Transfer Certificate (Ex.P7), the deceased was aged about 16 years and hence, this Court is inclined to fix the monthly income of the deceased at Rs.9,000/-. The proper multiplier to be adopted in the instant case is 18 as per the decision rendered in **Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121**. As per the decision laid down in **National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601**, 40% should be added towards future prospectus of the deceased.

**Calculation:**

Notional income = Rs.9,000/-

40% Future Prospects = Rs.3,600/-

Total = Rs.9,000/- + Rs.3,600 = Rs.12,600/-



**Loss of pecuniary benefits**

$$\begin{aligned} &= \text{Rs.}12,600/- \times 12 \times 18 \times 1/2 \\ &= \text{Rs.}13,60,800/- \end{aligned}$$

7. A sum of Rs.5,40,000/- awarded under the head 'loss of pecuniary benefits' is enhanced to Rs.13,60,800/-. The Tribunal has not awarded any amount under the heads 'loss of estate', and 'transportation' and therefore, a sum of Rs.15,000/- is awarded towards 'loss of estate' and a sum of Rs.10,000/- is awarded towards 'transportation'. All the other heads awarded by the Tribunal are not disturbed.

8. Accordingly, the award of the Tribunal in M.C.O.P.No.1234 of 2013 is modified as follows:

| <b><i>Sl. No.</i></b> | <b><i>Particulars</i></b>  | <b><i>Amount granted by the Tribunal</i></b> | <b><i>Amount granted by this Court</i></b> |
|-----------------------|----------------------------|----------------------------------------------|--------------------------------------------|
| 1.                    | Loss of pecuniary benefits | Rs.5,40,000/-                                | Rs.13,60,800/-                             |
| 2.                    | Loss of consortium         | Rs.15,000/-                                  | confirmed                                  |
| 3.                    | Funeral expenses           | Rs.15,000/-                                  | confirmed                                  |
| 4.                    | Transportation             | Nil                                          | Rs.10,000/-                                |
| 5.                    | Loss of estate             | Nil                                          | Rs.15,000/-                                |
|                       | Total                      | Rs.5,70,000/-                                | Rs.14,45,000/-                             |

The compensation awarded by the Tribunal is enhanced from Rs.5,70,000/- to Rs.14,45,000/- which shall carry interest at the rate of 7.5% per annum.

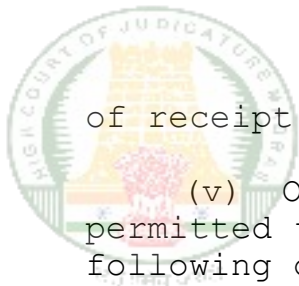
9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced Rs.5,70,000/- to Rs.14,15,000/- which shall carry interest at the rate of 7.5% per annum.

(iii) The appellants/claimants are directed to pay the Court fee for the enhanced compensation amount, if any and the Registry is directed to draft the decree only after the receipt of the Court fee.

(iv) The second respondent - Bharathi A.X.A.General Insurance Company Limited is directed to deposit the entire compensation of Rs.14,15,000/- (less the amount 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.1234 of 2013, on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Thanjavur, within a period of eight weeks from the date



of receipt of a copy of this order.

(v) On such deposit being made, the appellant/claimant is permitted to withdraw the entire compensation awarded to them, after following due process of law.

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Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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To

1. The Judge  
Motor Accidents Claims Tribunal,  
Special Subordinate Court, Thanjavur

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

3.The Sub Assistant Registrar,  
CO Section, Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.N.TAMILMANI, Advocate ( SR-16428[F] dated 04/04/2022 )

+1 CC to M/s.V. SAKTHIVEL, Advocate ( SR-16510[F] dated 05/04/2022 )

C.M.A(MD)No.570 of 2019  
04.04.2022

SRR(CO)  
KB(18.04.2022) 4P 7C