



C.M.A.No.59 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2023

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.59 of 2023

1.Kavitha
2.Karthick
3.Pappa

...Appellants

Vs.

1.Gunasekaran
2.The National Insurance Company Limited,
2nd Floor, Maruthi Complex,
F-215, Omalur Main Road,
Salem – 4.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award in Judgment and Decree dated 15.11.2021 made in M.C.O.P.No.1777 of 2019, on the file of Motor Accident Claims Tribunal/Special District Judge, Salem.

For Appellants	: Mr.M.Mohamed Riyaz
For R2	: Mr.J.Chandran



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J U D G M E N T

This Appeal has been filed against the award dated 15.11.2021 made in M.C.O.P.No.1777 of 2019, on the file of Motor Accident Claims Tribunal/Special District Judge, Salem.

2.The claimants are the Appellants herein, seeking enhancement of compensation. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3.On 13.05.2019 about 10.55p.m., when one Muthu was travelling in the bus bearing registration No.TN54-J-4343 from P.R.Patty to Salem near Sundar Lodge Raghavachariyar Rotary club, the driver of the bus drove the same in a rash and negligent manner and suddenly turned the vehicle as a result of which he fell down from the bus and sustained injuries. He was admitted in Salem G.H and died on the same day.

4. The claimants are the legal representatives of the deceased Muthu. On consideration of the facts and circumstances of the case, the Tribunal has awarded a sum of Rs.6,93,000/- as compensation in M.C.O.P.No.1777 of 2019 filed by the claimants. Having not satisfied with the quantum of compensation granted by the Tribunal, the claimants have preferred the present Appeal.



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5.Mr.J.Chandran, learned counsel takes notice on behalf of the 2nd Respondent/Insurance Company.

6. Heard the learned counsel appearing on behalf of both sides and perused the materials available on record.

7. The first petitioner is the mother, the 2nd petitioner is the father and the 3rd petitioner is the brother and 4th petitioner is the grandmother of the deceased.

8. During the trial, on the side of the Petitioners, PW1 and P.W.2 were examined and Ex.P.1 to Ex.P11 were marked and Ex.X1 was marked. On the side of the Respondents no witness was examined and no documents have been marked.

9. The Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the first respondent and the vehicle in question is insured with the second respondent/Insurance Company and accordingly, the Tribunal held that both the respondents are jointly and severally liable to pay the compensation.



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10. As per the evidence of PW1, deceased was earning not less than Rs.30,000/- per month and it was pleaded that he was earning not less than a sum of Rs.30,000/- as a Centering man, there is no proof of income on the part of the petitioners. Therefore the Tribunal notionally hold that the monthly income of the deceased shall be fixed at Rs.12,000/-. Since the age of the deceased was 24 years at the time of the accident, the multiplier is adopted as '18'. Therefore, the Tribunal has held that the total loss of income to the family of the petitioners is Rs.(12000*12*18)=25,92,000/-, out of which the said Muthu would have utilized 50% of Rs.12,96,000/- for his own purpose and the total loss of income to the petitioners, due to the death of the said Muthu is Rs.12,96,000/-, out of which the petitioners 1 and 2 who are the dependents of the deceased on the date of the accident are entitled to one half each. The 2nd petitioner has died during the pendency of this petition. Therefore, the petitioners 3 and 4 have been impleaded as the legal heirs of the 2nd petitioner. Even as per the petition version, the petitioners 3 and 4 are not the dependents of the said Muthu on the date of the accident. As per the petition, the petitioners 1 and 2 alone were the dependent of the deceased on the date of the accident. Therefore the petitioners 3 and 4 were not the dependents of the deceased Muthu on the date of the accident. The petitioner 3 and 4 cannot be deemed to be the dependents of the deceased just because the 2nd petitioner died during the



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pendency of this petition. The petitioners 3 and 4 can seek for compensation only when they are the dependents of the said Muthu on the date of the accident. Therefore, the Tribunal held that the petitioners 3 and 4 cannot claim compensation as they were not the dependent of the deceased Muthu on the date of the accident. Therefore, the share which the 2nd petitioner is entitled to cannot devolve upon the petitioners 3 and 4. Therefore the Tribunal held that the 1st petitioner alone is entitled to one half share in Rs.12,96,000/- namely Rs.6,48,000/- and granting Rs.20,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. Therefore the total compensation is fixed at Rs.6,93,000/- (Rupees Six lakhs and ninety three thousand only)

11. This Court finds no infirmity or perversity in the finding of the Tribunal and a sum of Rs.12,000/- is taken as the notional income of the deceased. The right multiplier "18" is found correct and 50% deduction towards personal expenses also warrants no interference.

12. Therefore, deducting 40% from the income, the future prospects is arrived at Rs.4,800/- (Rupees Four thousand and eight hundred only). Adding future prospects to the notional income (12000+4800) and deducting 50% of this personal expenses (6800/2), the loss of income to the



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family comes to a sum of Rs.18,14,400/- (Rupees Eighteen Lakhs fourteen thousand and four hundred only) (8400X12X18)

13. Taking into account of the fact that since no compensation have been awarded under the heads of loss of estate, transport expenses and the deduction of 50% of total income towards his personal expenses, this Court is of the view that sum of Rs.40,000/- each shall be awarded to Petitioners 1 and 2 towards 'loss of love and affection', a sum of Rs.15,000/- towards 'funeral expenses', a sum of Rs.15,000/- is awarded towards 'loss of estate' and a sum of Rs.10000/- towards Transport Expenses shall be awarded.

14. The break-up of the compensation is as follows:

<i>S. No.</i>	<i>Head</i>	<i>Awarded by the tribunal</i>	<i>Awarded by this Court</i>
1.	Loss of income	6,48,000/-	18,14,400/-
2.	Loss of Love and affection	20,000/-	80,000/- (40,000 x 2)
3.	Funeral expenses	25,000/-	15,000/-
4.	Loss of estate	----	15,000/-
5.	Transport expenses	----	10,000/-
	Total	Rs.6,93,000/-	Rs.19,34,400/-

In total, the claimants are entitled to a sum of Rs.19,34,400/- (Rupees Nineteen lakhs thirty four thousand and four hundred only). Interest at the rate of 7.5% per annum fixed by the Tribunal is also confirmed.



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15. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.6,93,000/- to Rs.19,34,400/- to the extent indicated above. No Costs.

(ii) the 2nd Respondent/insurance company is directed to deposit the modified enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, all the claimants/appellants are permitted to withdraw their entire share in the enhanced award amount with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) 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.

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Index : Yes/No

Internet : Yes/No

Neutral Citation:Yes/No

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1. The Motor Accident Claims Tribunal
Principal District Judge, Salem.
2. The Section Officer,
V.R.Section, High Court of Madras, Chennai.



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Pre-delivery Judgment made in
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