



WEB COPY



C.M.A.No.3103 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2023

CORAM

**THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN**

**C.M.A.No.3103 of 2012**

1. A.Selvam
2. L.Sagaya Chandra Mary
3. R.Sumathi
4. S. Mary Sagaya Vimala

... Appellants

..Vs..

1. A.Elumalai
2. ICICI Lombard General Insurance Co.Ltd.,  
No.140, Chottabai Centre, Nungambakkam High Road,  
Chennai – 600 034.

... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed by the Motor Accidents Claims Tribunal, Additional District & Sessions Judge – III, Poonamallee in M.C.O.P.No.1026 of 2009 dated 05.06.2012.

For Appellants  
For Respondents

: Mr.J.Mahalingam  
: Mr.K.Poomalai [R2]



C.M.A.No.3103 of 2012

## **JUDGMENT**

WEB COPY

This Civil Miscellaneous Appeal arises against the judgment of the Motor Accident Claims Tribunal, Additional Sessions Judge – III, Poonamallee passed in M.C.O.P.No.1026 of 2009 on 05.06.2012.

2. The claimants have filed this appeal seeking enhancement of compensation.

3. It is the case of the appellant/claimant that on 28.11.2007 at about 20.45 p.m., when the deceased was walking in the Eastern side of CTH road, near Ambattur O.T. Bus Stand from Thirumullaivoyil, a goods carrier auto bearing Reg. No.TN-07-AT-9219, driven by its driver in a rash and negligent manner at a high speed, came from the back side, dashed against the deceased and caused the accident. Due to this accident, the deceased sustained multiple grievous injuries and died in the hospital on 30.11.2007. Hence, the claimants have filed a petition before the Tribunal claiming a sum of Rs.12,50,000/- from the respondent together with interests and costs for the death of husband of the first claimant and father of the claimants 2 to 4.



C.M.A.No.3103 of 2012

4. Before the Tribunal, on behalf of the claimant, two witnesses were examined and eight exhibits were marked. None were examined on the side of respondents nor were any exhibits marked.

5. On appreciation of the materials before it, the Tribunal awarded compensation as follows:

|                                |   |                |
|--------------------------------|---|----------------|
| (a) Compensation for           |   |                |
| Loss of Dependency             | : | Rs. 2,88,000/- |
| (b) Funeral Expenses           | : | Rs. 5,000/-    |
| (c) Loss of Love and Affection | : | Rs. 10,000/-   |
| (d) Loss of Consortium         | : | Rs. 5,000/-    |
|                                |   | -----          |
|                                |   | Rs. 3,08,000/- |
|                                |   | -----          |

The said sum was directed to be paid by the respondent along with interest at 7.5% per annum from the date of petition till the date of deposit of the award amount.

6. Learned counsel for the appellants/claimants submitted that the Tribunal has wrongly considered the income of the deceased at Rs.3,000/- only and has erred in awarding Rs.10,000/- towards love and affection Rs.5,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses, which are on the lower side.



C.M.A.No.3103 of 2012

7. The learned counsel for the second respondent, on the other hand, submits that the order of the Tribunal is fair and justified and it does not require interference by this Court.

8. Heard the learned counsel appearing for the parties and perused the records.

9. Considering the fact that the accident had occurred due to the negligence of the driver of the goods carrier and the deceased had lost his life, this Court is of the view that the compensation of Rs.2,88,000/- towards loss of dependency, Rs.5,000/- towards funeral expenses, Rs.10,000/- towards loss of love and affection and Rs.5,000/- towards loss of consortium needs to be enhanced. Accordingly, considering his avocation, the monthly income of the deceased is fixed at Rs.4,500/- and loss of dependency would be Rs.4,00,950/-  $[4,500 + 10\% = 4950, 4950 * 12 * 9 * 3/4 = 4,00,950/-]$  and a sum of Rs.15,000/- towards funeral expenses, Rs.60,000/-  $[Rs.15,000/- \text{ each claimants/appellants}]$  towards love and affection and Rs.40,000/- towards loss of consortium is granted. Though the Tribunal has not awarded any



C.M.A.No.3103 of 2012

amount under the head of loss of estate, this Court is inclined to award a sum of Rs.15,000/- towards loss of estate.

10. In the light of the said discussions, the modified award is as follows:

| <i>S.No.</i> | <i>Particulars</i>         | <i>Award of Tribunal</i> | <i>Enhanced amount</i> |          |
|--------------|----------------------------|--------------------------|------------------------|----------|
| 1.           | Loss of Dependency         | Rs. 2,88,000/-           | Rs. 4,00,950/-         | Enhanced |
| 2.           | Funeral Expenses           | Rs. 5,000/-              | Rs. 15,000/-           | Enhanced |
| 3.           | Loss of Love and Affection | Rs. 10,000/-             | Rs. 60,000/-           | Enhanced |
| 4.           | Loss of Consortium         | Rs. 5,000/-              | Rs. 40,000/-           | Enhanced |
| 5.           | Loss of Estate             | Rs. -                    | Rs. 15,000/-           | Granted  |
|              |                            | <b>Rs. 3,08,000/-</b>    | <b>Rs. 5,30,950/-</b>  |          |

11. Accordingly, the amount awarded by the Tribunal is enhanced from Rs.3,08,000/- to Rs.5,30,950/- together with interest at 7.5% per annum from the date of petition till the date of deposit as compensation.

12. The second respondent/ Insurance Company is directed to deposit the entire amount i.e., Rs.5,30,950/-, less the amount already paid, if any together with interest at 7.5% per annum from the date of petition till date of



C.M.A.No.3103 of 2012

deposit and costs to the credit of MCOP.No. 1026 of 2009 on the file of the Motor Vehicle Accident Claims Tribunal, Additional Sessions Judge – III, Poonamallee within a period of six(6) weeks from the date of receipt of a copy of this order.

13. On such deposit, the appellants/claimants are entitled to withdraw their respective share, as apportioned by the tribunal, on due application.

Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

**31.03.2023**

Index:Yes/No  
Speaking/Non-speaking Order  
mp

To

1.The Additional Sessions Judge,  
(Motor Accidents Claims Tribunal),  
Poonamallee.

2.The Section Officer  
V.R.Section, High Court of Madras.

6/7



WEB COPY



C.M.A.No.3103 of 2012

**A.A.NAKKIRAN, J.**

mp

**C.M.A.No.3103 of 2012**

**31.03.2023**