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C.M.A.No.229 of 2023

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

DATED: 22.09.2023

CORAM :

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

C.M.A.No.229 of 2023

1.Sathiya Sakthivel  
2.Sakthivel Pondian

Appellants

Vs

1.V.Kalaiselvi  
2.The New India Assurance company Limited,  
2<sup>nd</sup> Floor, Ram Complex,  
29, Paramathi Road, Namakkal.

Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and award of the Motor Accident Claims Tribunal, Additional District Judge, Ariyalur, in M.C.O.P.No.88 of 2022 dated 30.11.2022.

For appellants : Mr.P.Parthikannan

For R2 : Mr.c.Johnson



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### **JUDGMENT**

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 30.11.2022, made in M.C.O.P.No.88 of 2022 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Ariyalur.

2. The appellants filed M.C.O.P.No.88 of 2022 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Ariyalur claiming a sum of Rs.25,00,000/- as compensation for the death of one Santhosh, who died in the accident that took place on 25.06.2022.

3. According to the appellants, on 25.06.2022 at about 08.30 p.m., when the deceased was travelling in a two wheeler as a pillion rider on a public road, the driver of the lorry belonging to the first respondent, insured with the second respondent, came in a rash and negligent manner and dashed against the two wheeler; and as a result of which, the deceased sustained fatal injuries.



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4. Both the respondents, who are the owner and insurer of the lorry, remained ex-parte before the Tribunal.

5. Before the Tribunal, the first appellant examined herself as P.W.1 and an eyewitness to the accident was examined as P.W.2 and marked 7 documents as Exs.P1 to P.7. The respondents did not let in any oral and documentary evidence.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second respondent being insurer of the lorry to pay a sum of Rs.3,70,000/- as compensation to the appellants.

7. The learned counsel for the appellants submitted that though the accident took place in the year 2022, the Tribunal has fixed a meagre amount as notional income of the deceased and applied the multiplier of 5, which is also erroneous. Hence, he prayed for enhancement of compensation.



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8. Though notice has been served on the first respondent, none has entered appearance.

9. Per contra, the learned counsel for the second respondent submitted that the award of the Tribunal is just and reasonable and no interference is called for. Hence, he prayed for dismissal of the appeal.

10. The only question involved in the instant appeal is:

Whether the compensation awarded by the Tribunal is just and reasonable?

11. On perusal of the records, it is seen that the deceased was aged 15 years at the time of accident. Considering the fact that the accident took place in the year 2022 and the deceased was a minor, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased as Rs.60,000/- per annum. The Tribunal applied multiplier '5', which is not correct. As per the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC (Sarla Verma vs. Delhi Transport Corporation)**, the correct multiplier applicable is '15'. Hence, the



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compensation awarded by the Tribunal towards loss of dependency is modified to Rs.9,00,000/- (Rs.60,000/- X 15).

12. The appellants are each entitled for an amount of Rs.44,000/- towards consortium and love and affection. Therefore, Rs.88,000/- is awarded under the said head. The compensation awarded by the Tribunal under the head funeral expenses at Rs.25,000/- is excessive and the same is hereby reduced to Rs.16,500/-. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.16,500/- is hereby awarded towards loss of estate. The compensation awarded under the head transport expenses is just and reasonable and the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

| Sl. No | Description                | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|--------|----------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.     | Loss of Dependency         | 2,70,000/-                      | 9,00,000/-                        | Enhanced                               |
| 2.     | Loss of estate             | -                               | 16,500/-                          | Granted                                |
| 3.     | Loss of love and affection | 45,000/-                        | 88,000/-<br>(44,000x2)            | Enhanced                               |
| 4.     | Funeral expenses           | 25,000/-                        | 16,500/-                          | Reduced                                |



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|    |                |                   |                    |                                      |
|----|----------------|-------------------|--------------------|--------------------------------------|
| 5. | Transportation | 20,000/-          | 20,000/-           | Confirmed                            |
|    | <b>Total</b>   | <b>3,60,000/-</b> | <b>10,41,000/-</b> | <b>Enhanced by<br/>Rs.6,81,000/-</b> |

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,60,000/- is hereby enhanced to Rs.10,41,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

**22.09.2023**

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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**To:**

- 1.The Motor Vehicle Accident Tribunal,  
Additional District Judge,  
Ariyalur.
- 2.The Section Officer,  
VR Section, High Court, Madras.

**SUNDER MOHAN, J.**



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