



CMA No.2967 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2023

PRONOUNCED ON : 13.03.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.2967 of 2022

1. Sivasakthi
2. Minor Vezharasan
Velayutham (died)
3. Anandhai

.. Appellants/petitioners

Vs.

1. Elangovan
2. Divisional Manager,
The Oriental India Insurance Company Ltd.,
Hub 3rd Party Claims, Vijayalakshmi Complex,
1st Floor, No.32/13, Phase No.2,
Sathuvachari, Vellore.

.. Respondents

(R1 remained exparte before the tribunal)

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to enhance the award dated 31.10.2019 passed in MCOP No.361 of 2018 on the file of the Motor Accident Claims Tribunal [Special Sub Judge], Thiruvannamalai.



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For Appellants : Mr.F.Terry Chella Raja

For Respondents : Mr.J.Chandran (for R2)

JUDGMENT

Claim petitioners are the appellants, seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal (Special Sub Judge), Thiruvannamalai, vide judgment and decree dated 31.10.2019 in MCOP No.361 of 2018.

2. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the claims tribunal.

3. The factum of the accident, the manner of the accident and the negligence on the part of the driver of the offending vehicle, are not disputed and hence, the findings of the tribunal are confirmed.

4. On the point of quantum of compensation both the parties are heard.



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5. Perusal of the award shows that the deceased was aged 32 years as could be seen from Ex.P3-Postmortem certificate and a self-employed. Therefore, fixing the notional income of the deceased as Rs.8,500/-per month; applying '16' multiplier, as per the decision of the Hon'ble Supreme Court in *Sarla Varma Vs. Delhi Transport Corporation Ltd.*, reported in **TNMAC 2009 (2) SC**; adding 40% of notional income towards future prospects, as per the decision of our Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi*, reported in **2017 (16) SCC 680** and by deducting $\frac{1}{4}$ towards his personal and living expenses, as there were four dependants, the claims tribunal has awarded Rs.17,13,600/-, towards loss of dependency.

6. The date of accident is 24.03.2018 and the deceased claimed to be 32 years and was working as a driver in a private Travels Company viz., Naveen Balaji Travels and also an agriculturist and earned Rs.40,000/- per month. Though, except the driving licence and documents relating to the training undergone by the deceased in the Institute of Road Transport, Gummidipoondi, no documents are produced to prove his income, taking



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into consideration, the year of accident and the nature of avocation, this

Court is of the considered view that the notional income be fixed at Rs.10,000/-per month and accordingly, the loss of dependency is therefore, reassessed as under.

Monthly income	-	Rs.10,000/-
Future Prospects @ 40%	-	Rs. 4,000/-
Total Income	-	Rs.14,000/-
Loss of dependency/income	=	Rs.14,000/- x 12 x 16 x $\frac{3}{4}$
	=	Rs.20,16,000/-

7. Further, the claims tribunal has awarded Rs.40,000/- towards 'loss of consortium' to the 1st appellant/wife and Rs.50,000/- to the 2nd appellant/minor son of the deceased only, under the head 'loss of love and affection'. No amount has been granted to the parents/3rd and 4th appellants, towards 'loss of love and affection'. Thereafter, the claims tribunal has awarded a sum of Rs.15,000/- each under the heads, 'loss of estate' and 'funeral expenses', are awarded by the tribunal. There is no award towards 'transportation charges'.

8. The parents/3rd and 4th appellants, have lost their son, aged 32



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years and hence, I am inclined to modify the award under the head 'loss of love and affection' and award Rs.40,000/- each to the appellants 2 to 4. In addition, a sum of Rs.15,000/- is awarded under the head 'transportation charges'. Compensation awarded under other heads are reasonable and hence, confirmed.

9. In view of the above discussion, the award of the tribunal is enhanced from Rs.18,33,600/- to Rs.22,21,000/- as detailed hereunder.

	Amount awarded by the tribunal Rs.	Award now modified Rs.	Enhanced Amount
Loss of dependency	17,13,600	20,16,000	3,02,400
Loss of consortium	40,000	40,000	
Loss of love and affection	50,000	1,20,000 Rs.40,000/- to each claim petitioners 2 to 4	70,000
Loss of Estate	15,000	15,000	
Funeral Expenses	15,000	15,000	
Transportation charges	15,000	15,000	15,000
Total	18,33,600	22,21,000	
Enhanced now			Rs.3,87,400/-

10. During pendency of the appeal, it appears that the 3rd claim petitioner-Velayudham/father of the deceased, had died. Therefore, out of the enhanced amount, i.e. Rs.3,87,400/-, the 1st appellant/wife is entitled to



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Rs.1,00,000/-, 2nd appellant/minor son, is entitled to Rs.1,87,400/- and the 3rd appellant/mother of the deceased, is entitled to Rs.1,00,000/-.

11. In the result, it is ordered as follows:

- (i) The judgment and decree dated 31.10.2019, made in MCOP No.361 of 2018 on the file of the Motor Accident Claims Tribunal [Special Sub Judge], Thiruvannamalai, stands modified to the limited extent that the compensation of Rs.18,33,600/- awarded by the claims tribunal is enhanced to Rs.22,21,000/- and the interest awarded by the claims tribunal remains unaltered.
- (ii) Additional Court fee, if any, to be paid by the claim petitioners within a period of four weeks and decree to be drafted after the payment of Court fee.
- (iii) The 2nd respondent-Insurance Company is directed to deposit the enhanced compensation amount of Rs.22,21,000/- with proportionate interest and costs to the credit of MCOP No.361 of 2018 on the file of the Motor Accident Claims Tribunal [Special Sub Judge], Thiruvannamalai, within a period of four weeks from the date of receipt of a copy of this order, less the



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amount already deposited, if any.

- (iv) On such deposit, the appellants/claim petitioners, are permitted to withdraw the same, on making necessary applications.

12. With the above directions, the Civil Miscellaneous Appeal stands partly allowed. No Costs.

13.03.2023

Index : Yes/No

Neutral Citation : Yes/No.

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To

The Special Sub Judge,
Motor Accident Claims Tribunal,
Thiruvannamalai.



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RMT.TEEKAA RAMAN,J.,
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Pre-delivery Judgment in
CMA No.2967 of 2022

13.03.2023