



C.M.A.Nos.1568 of 2021 & 278 of 2023

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

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|----------------------|------------|
| <b>Reserved on</b>   | 23.03.2023 |
| <b>Pronounced on</b> | 06.04.2023 |

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR  
AND  
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.**

**C.M.A.Nos.1568 of 2021 & 278 of 2023  
and C.M.P.Nos.2135 of 2023**

**C.M.A.No.1568 of 2021**

1.R.Indira  
2.M.Aruna  
3.R.Arunkumar  
4.R.Ajithkumar  
5.Aboorvam

...Appellants

vs.

1.A.Vijayakumar  
  
2.Reliance General Insurance company Ltd.  
Reliance House, 6<sup>th</sup> floor,  
6, Haddows Road, Nungambakkam,  
Chennai-600 006



C.M.A.Nos.1568 of 2021 & 278 of 2023

...Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the award dated 30.07.2019 made in M.C.O.P.No.3498 of 2015 on the file of the Motor Accidents Claims Tribunal, (I Additional District and Sessions Judge), Cuddalore .

For Appellant : Mr.Ramya V Rao

For R1 : No appearance

For R2 : M/s.C.Bhuvanasundari

**C.M.A.No.278 of 2021**

The Branch Manager,  
Reliance General Ins.co. Ltd.  
Reliance House, 6<sup>th</sup> floor, 6, Haddows road,  
Nungambakkam, Chennai-600 006

...Appellant

Vs.

1.R.Indira

2.M.Aruna

3.R.Arunkumar

4.R.Ajithkumar

5.Aboorvam

6.A.Vijayakumar

...Respondents



C.M.A.Nos.1568 of 2021 & 278 of 2023

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 30.07.2019 made in M.C.O.P.No.3498 of 2015 on the file of the Motor Accidents Claims Tribunal, (I Additional District and Sessions Judge, Cuddalore .

For Appellant : Mr.C.Bhuvanasundari

For R1 to R5 : Mr.Ramya V Rao

For R6 : No appearance

### **COMMON JUDGMENT**

(Judgment of the Court was delivered by  
K.GOVINDARAJAN THILAKAVADI,J.)

The claimants before the Motor Claims Tribunal (I Additional District and Sessions Judge) Cuddalore, in M.A.C.T.O.P.No.3498 of 2015 are the appellants in this Civil Miscellaneous Appeal No.1568 of 2021. The Insurance Company, who is the 2<sup>nd</sup> respondent before the Motor Claims Tribunal (I Additional District and Sessions Judge) Cuddalore, in M.A.C.T.O.P.No.3498 of 2015 is the appellant in this Civil Miscellaneous Appeal No.278 of 2023. Since challenging in both appeals arising out of judgment and decree dated 30.07.2019 made in M.A.C.T.O.P.No.3498 of 2015, both appeals have clubbed together common judgment is passed.



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2. Aggrieved by the award passed by the Tribunal, the Insurance Company and the claimants have brought forth the above said Civil Miscellaneous Appeals.

The impugned order is directed against the award dated 30.07.2019 passed by the Motor Accident Claims Tribunal in M.A.C.T.O.P.No.3498 of 2015 directing the 2<sup>nd</sup> respondent liable to pay a compensation of Rs.20,94,500/- with interest at the rate of 7.5% per annum from the date of filing the petition till the date of realization and costs for the death of one Ravichandran in an accident alleged to have been taken place on 22.06.2015.

3. According to the appellant/Insurance company in C.M.A.No.278 of 2023, the deceased was under the influence of alcohol at the time of the alleged accident and the same was not considered by the Tribunal while awarding compensation to the claimants. The further submission is that fixing the monthly salary of the deceased at Rs.13,500/- by the Tribunal, without any proof of income, is erroneous. Hence, the above appeal is filed for setting aside the decree and judgment dated 30.07.2009 passed by the Tribunal in M.A.C.T.O.P.No.3498 of 2015.



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4.The appellants/Claimants in C.M.A.No.1568 of 2021 preferred the said appeal on the ground that, the Tribunal erred in fixing the monthly notional income of the deceased at Rs.13,500/-. The Tribunal failed to take note of the documentary evidences Ex.P.10 and Ex.P11. The Tribunal ought to have fixed the notional income of the deceased at Rs.20,000/- per month. It is further submitted that the Tribunal ought to have awarded a sum of Rs.40,000/- to each petitioners for love and affection instead of Rs.10,000/- to all the petitioners. Hence, prays for setting aside the award passed by the Tribunal by enhancing the award of compensation.

5.Heard on both sides. Records perused.

6.The fact that there occurred an accident on 22.06.2015 at about 20.45 hours when the deceased was riding a motor cycle bearing Reg. No.TN-04-Y-4372 on the Kondur main road is not in dispute. According to the claimants, the motor cycle bearing Registration No.TN-31-AD-8280, came in a rash and negligent manner dashed against the deceased vehicle. In which the deceased sustained fatal injuries and succumbed to the injuries sustained by him. According to the



Insurance Company, the deceased was under the influence of alcohol and therefore the deceased also contributed for the accident. The learned counsel appearing for the appellant/Insurance Company would vehemently argue that the evidence of R.W1 who had investigated the accident and Ex.R.4 letter from the Government Hospital, Cuddalore would clearly establish that the deceased Ravichandran at the time of the accident was under the influence of alcohol. On perusal of Ex.R.4-Accident Register it is stated that breath of smell of alcohol found in the patient. As rightly pointed out by the Tribunal, the percentage of alcohol content was not mentioned. Firstly, driving after consuming alcohol in itself is not even an offence till the time the blood alcohol level exceeds the permissible limits. There is nothing on record to show that the deceased had consumed alcohol to the extent that it would hinder his capacity to drive. Moreover, there is nothing in Ex.P.2-Postmortem report to show that the deceased was under the influence of alcohol at all. The onus of proving a fact lies on the person who alleges it. Therefore, under these circumstances it cannot be said that the deceased also contributed for the accident.

7.The Tribunal after considering the oral evidences of P.W.1 and P.W.2 and EX.P.1-copy of FIR and Ex.P.9-Charge Sheet concluded that the accident has



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occured due to the rash and negligent driving of the 1<sup>st</sup> respondent's vehicle bearing Reg No.TN-31-AD-8280 motor cycle. The rider of the motor cycle was not examined on the side of the 2<sup>nd</sup> respondent to prove the manner of accident. Except the evidence of R.W.1 who is attached to the Insurance Company there is nothing on record to show that the rider of the offending vehicle bearing Reg. No. TN-31-AD-8280 motor cycle was not at fault. The eyewitness P.W.2 has clearly deposed about the accident and there is no rebuttable evidence to disbelieve the version of PW.2. No contributory negligence can be attributed on part of the deceased. Therefore, the findings of the Tribunal on the question of negligence do not warrant any interference.

8.In C.M.A.No.1568 of 2021 the claimants are aggrieved by the insufficient compensation awarded by the Tribunal. The learned counsel appearing for the claimants would contend that the deceased at the time of the accident was doing Cable TV business and also Real Estate business and the same is evident from Ex.P.9-Cable TV Operator identity card and Ex.P.11- Authorisation Letter issued by Arasu Cable TV Corporation. However, the Tribunal without considering the above documents fixed the monthly notional income of the deceased at



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Rs.13,500/- . The Tribunal ought to have fixed the notional income at Rs.20,000/- per month. The further contention of the learned counsel for the claimants is that the Tribunal has granted only Rs.10,000/- to all the petitioners towards love and affection and the same has to be enhanced to Rs.40,000/- to each of the petitioners. However, the claimants have not produced any documentary evidence to establish that at the time of accident the deceased was earning Rs.50,000/- per month. Except the oral evidence of P.W.3 there is nothing on record to prove the income of the deceased at the time of the accident.

9. It is not in dispute that the deceased was aged about 45 years at the time of accident. According to the claimants, the deceased was doing business and was earning a sum of Rs.50,000/- per month for which there is no proof. The Tribunal has fixed the monthly income of the deceased at Rs.13,500/- which can be enhanced to Rs.15,000/- considering the facts and circumstance of the case. Applying the principles laid down in *Sarla Varma vs. Delhi Transport Corporation* the multiplier 13 is taken for the deceased who was 45 years at the time of the accident. And as per the decision in *National Insurance Company vs. Pranaisethi and others* future prospects is considered at the rate of 25%. Therefore, the total



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monthly income of the deceased including future prospects come to Rs.18,750/-

(15,000x25%) in the case on hand the dependents of the deceased is five members.

Hence, 1/4<sup>th</sup> of the deduction is made towards the personal expenses of the deceased. Accordingly, the monthly income of the deceased is Rs.14,062/-(18,750-

1/4). The total annual income after the deduction Rs.21,93,672(14,062x12x13).

The amount awarded by the Tribunal in all other heads stands confirmed. The claimants are entitled for compensation under various heads as follows:

| <i>S.No.</i> | <i>Description</i>                  | <i>Amount awarded by the Tribunal (Rs.)</i>  | <i>Amount awarded by this Court (Rs.)</i> | <i>Award confirmed or enhanced or granted</i> |
|--------------|-------------------------------------|----------------------------------------------|-------------------------------------------|-----------------------------------------------|
| 1            | Loss of Income                      | 19,74,492/-                                  | 21,93,672/-                               | Enhanced                                      |
| 2            | Loss of Consortium                  | 40,000/-                                     | 40,000/-                                  | Confirmed                                     |
| 3            | Loss of love and affection 10.000x5 | 50,000/-                                     | 50,000/-                                  | Confirmed                                     |
| 4            | Transport Corporation               | 15,000/-                                     | 15,000/-                                  | Confirmed                                     |
| 5            | Funeral Expenses                    | 15,000/-                                     | 15,000/-                                  | Confirmed                                     |
|              | <b>Total</b>                        | <b>20,94,492/- rounded to Rs.20,94,500/-</b> | <b>23,13,672/-</b>                        | <b>Enhanced by Rs.2,19,172/-</b>              |

10. In the result, this Civil Miscellaneous Appeal No.1568 of 2021 is partly allowed and the compensation awarded by the Tribunal is hereby enhanced from



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Rs.20,94,500/- to Rs.23,13,672/- together with interest at the rate of 7.5% per

annum from the date of filing of claim petition till the date of deposit. The

Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are entitled to withdraw their respective share as per the apportionment granted by the Tribunal. In view of the enhancement granted by this Court in C.M.A.No.1568 of 2021 filed by the claimants, the Civil Miscellaneous Appeal No.278 of 2023 filed by the Insurance Company stands dismissed. There shall be no order as to costs. Consequently the connected Miscellaneous Petition is closed.

**(D.K.K.J) (K.G.T.,J.)**

06.04.2023

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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To:-

The Motor Accident Claims Tribunal,  
II Additional District Judge), Vellore @ Ranipet.



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C.M.A.Nos.1568 of 2021 & 278 of 2023

**D.KRISHNAKUMAR, J.**  
**and**  
**K.GOVINDARAJAN THILAKAVADI, J.**

vsn

**C.M.A.Nos.1568 of 2021 & 278 of 2023**  
**and C.M.P.Nos.2135 of 2023 & 12940 of 2021**

**06.04.2023**