



C.M.A. No.851 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.851 of 2023

1.K.Samalavathi
2.K.Ezhumalai
3.K.Malathi
4.K.Rajalakshmi

... Appellants/Petitioners

Vs.

1.K.Palaniappan

2.The National Insurance Co.Ltd.,
Motor Third Party Claims Office,
No.46, III-Floor, Moore Street,
Chennai – 600 001.

3.N.Krishnan (died)

4.K.Saroja

...Respondents



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.01.2023 in M.C.O.P. No.7693/2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court - I to deal with MCOP Cases, Small Causes Court, Chennai.

For Appellants : Mrs.N.Premalatha

For Respondents : R1 - Exparte
R2 - Mr. M.J.Vijayaraghavan
R3 - Died
R4 – No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed seeking enhancement of compensation granted by the Tribunal.

2. The appellants filed a claim petition stating that on 05.12.2017 at about 02.00 hours, while the deceased was riding a lorry bearing Registration No. TN 30 AM- 4268 at GST Road near Sothupakkam Overbridge, a driver of the lorry bearing Registration No. TN-47-T-8731 belonging to the first



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respondent herein suddenly stopped in the middle of the road without any indication and without following the traffic rules and regulations, as a result of which, the lorry driven by the deceased hit the backside of the offending lorry and caused the accident, as a result of which, the deceased suffered fatal injuries and hence, entitled to compensation.

3.The first respondent remained ex-parte before the Tribunal.

4. The second respondent/Insurance Company resisted the claim petition stating that the accident did not take place due to the negligent driving of the driver of the insured vehicle; that the claim made by the appellant in any case is excessive and prayed for dismissal of the claim petition.

5. The third and fourth respondents filed a counter and stated that they are the father and mother of the deceased; and that they are also entitled to compensation.

6. Before the Tribunal, the appellants examined two witnesses as P.W.1 and P.W.2 and marked sixteen documents as Exs.P1 to P16.



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The respondents neither examined any witness nor marked any document on their side.

7. The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second respondent/Insurance Company being the insurer of the lorry to pay a sum of Rs.19,23,800/-as compensation to the appellants.

8. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

10. The learned counsel for the appellants submitted that the award of compensation by the Tribunal is meagre; that the Tribunal had fixed a very meagre notional income of Rs.10,500/- per month, although the appellants had established that the deceased was working as a lorry driver; that the appellants had also marked the driving license copy of the deceased as Ex.P5,



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to establish his avocation and hence, prayed for enhancement of compensation.

11. The first respondent remained ex-parte before the Tribunal and the learned counsel for the appellants sought permission of this Court to dispense with notice to the first respondent and made an endorsement to that effect. Hence, notice to the first respondent is dispensed with.

12. The learned counsel for the second respondent, per contra, submitted that the Tribunal had fixed the correct notional income; that the Hon'ble Supreme Court in ***Chandra @ Chanda @ Chandararam and another Vs. Mukesh Kumr Yadav and others*** reported in ***2021 (2) TN MAC 498 (SC)*** had fixed the notional income of Rs.8,000/- per month for a heavy vehicle driver, an accident which took place in the year 2016. The learned counsel also relied upon the Division Bench Judgment of this Court in ***Divisional Manager, United India Insurance Co. Ltd., Vs. Manimegalai and others*** reported in ***2022 (2) TN MAC 222 (DB)*** wherein, Rs.13000/- was



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fixed for a driver, for an accident which took place in year 2013; and hence, no interference is called for and prayed for the dismissal of the appeal.

13. The third respondent, father of the deceased is no more. Though notice has been served on the fourth respondent (mother of the deceased), none has entered appearance.

14. Heard the learned counsel appearing for the appellants as well as the second respondent and perused the materials available on record.

15. The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

16. This Court is of the view that fixing of notional income would depend on facts and circumstances of each case. There cannot be any universal formula for determining notional income. In fact in the decisions cited by the learned counsel for the respondents, in one case the notional



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income was fixed as Rs.8,000/- for the accident of the year, 2016 and in

another case at Rs.13,000/- for an accident of the year 2013. Therefore, there

cannot be a precedent for fixing notional income as it is done on the facts of

the case. In the instant case, the appellants had established that the deceased

was working as a lorry driver and had marked Ex.P5 as driving license to

establish his avocation. Considering the age, avocation of the deceased and

the year of the accident, this Court is of the view that it would be reasonable

to fix Rs.15,000/- as notional monthly income for the deceased. The deceased

was aged 44 years at the time of the accident, hence the appellants are entitled

to 25% enhancement towards Future Prospects and the multiplier applicable

is '14'. Considering the dependants of the deceased, 1/4th of his income has to

be deducted towards his personal expenses. Thus, by fixing Rs.15,000/- as

notional income, adding 25% future prospects, by applying multiplier '14'

and deducting 1/4th of his income, the compensation under the head loss of

dependency is calculated as follows:

$$\text{Rs.15000/-} + (25\% \times \text{Rs.15,000}) \times 12 \times 14 \times \frac{3}{4} = 23,62,500/-$$



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16. The compensation awarded under other heads is just and reasonable and hence, the same are confirmed. Thus, the Compensation awarded by the Tribunal is enhanced from Rs.19,23,800/- to Rs.26,32,800/-, break-up as follows :-

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Total Loss of Dependency	16,53,750/-	23,62,500/-	Enhanced
2.	Loss of Consortium	2,40,000/-	2,40,000/-	Confirmed
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Grand Total	19,23,750/- rounded of to Rs.19,23,800	26,32,500/- rounded of to Rs.26,32,800	Enhanced by Rs.7,09,000/-

17. With the above modification, this Civil Miscellaneous Appeal is



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partly allowed and the compensation awarded by the Tribunal at

Rs.19,23,800/- is hereby enhanced to Rs.26,32,800/- together with interest at

7.5% per annum (excluding the default period if any) from the date of petition

till the date of deposit. Out of the said amount, the first appellant is entitled to

Rs.13,82,800/-; the appellants 2 to 4 are entitled to Rs.3,50,000/- each; and

the respondents 3 and 4 are entitled to Rs.1,00,000/- each. The

second respondent / Insurance Company is directed to deposit the award

amount, now determined by this Court along with interest (excluding the

default period if any) 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 and the fourth respondent are

permitted to withdraw their share as apportioned now, less the amount if any,

already withdrawn, At the time of filing of the appeal, the third respondent

died, hence, the share of the third respondent if not already withdrawn is

directed to be apportioned among his legal heirs. The appellants are directed

to pay the necessary Court Fee, if any, on the enhanced award amount.

No costs.



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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

Copy to:-

1. The, Special Sub Court - I,
Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.

2. The Section Officer,
VR Section,
High Court,
Madras.

SUNDER MOHAN, J.

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C.M.A. No. 851 of 2023

Dated: 25.08.2023

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