



C.M.A.No.1402 of 2023

**IN THE HIGH OF JUDICATURE AT MADRAS
DATED :27.07.2023**

**Coram
The Hon'ble Mr.Justice Sunder Mohan**

C.M.A.No.1402 of 2023

1. Alamelu

minor Chandramughi (died)
minor Bharanilesan (Died)
Mookkayee (died)

2. M.Annamalai

Appellants

Vs

1. J.Purusothaman

2. M/s.United India Insurance Co. Ltd.,
104-A, Peramanur Main Road,
Peramanur, Salem -7.

..Respondent

(R-1 remained exparte,
hence, notice to R-1 is dispensed with)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 01.06.2022, made in M.C.O.P.No.591 of 2019, on the file of the Motor Accident Claims Tribunal (Special District Judge) Salem.



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For Appellant : Mr.M.Lokesh

Respondent -1 : Ex parte

For Respondent-2 : Mr.R.Sreevidhya

JUDGEMENT

This Civil Miscellaneous Appeal has been filed by the appellants/claimants challenging the compensation awarded by the learned Special District Judge, Motor Accident Claims Tribunal, Salem (hereinafter, referred to as 'the Tribunal') in M.C.O.P.No.591 of 2019, dated 01.06.2022.

2. The claim petition was filed stating that on 09.01.2019, at 20.15 hours, when the deceased Kamalakannan was riding his two wheeler, bearing Regn.No.TN 54-Z-5010, on his left side in Chennai- Salem, National Highway Main Road, near Rama's Cafe, Tennagudipalayam, a Car, bearing Regn.No.TN05-BJ-4099, came in the opposite direction, in a rash and negligent manner and dashed against the deceased's two wheeler, as a result of which, the deceased sustained grievous injuries and died on the



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spot. Hence, the appellants, who are wife, two children and parents of the deceased filed claim petition claiming compensation of Rs.30,00,000/-.

3. The 1st respondent, owner of the Vehicle (Car) remained *ex-parte* before the Tribunal.

4. The 2nd respondent/Insurance Company filed a counter statement, denying all the averments made in the claim petition and stated that it was the rider of the two wheeler, who contributed to the accident, inasmuch as, he, without wearing helmet, without insurance to the Vehicle, rode the two wheeler in a rash and negligent manner and dashed against the Car, and hence, the Insurance Company, being the insurer of the Car is not liable to pay compensation to the appellants; that, in any case, the compensation claimed is excessive and prayed for dismissal of the claim petition

5. Before the Tribunal, in order to prove the claim, first claimant/first petitioner examined herself as P.W.1 besides examining one other witness, Thangavel as P.W.2 and marked 11 documents as Ex.P.1 to



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Ex.P.11. On the side of the respondent/Insurance Company, no witness was examined, however, one document was marked.

6. The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving of driver of the first respondent's vehicle and directed both the respondents to pay the compensation of Rs.9,75,000/- jointly and severally to the appellants/claimants.

7. Aggrieved over the award passed by the Tribunal, the appellants/claimants have filed the present appeal seeking for enhancement of compensation.

8. Mr.M.Lokesh, learned counsel appearing for the appellants/claimants has submitted that award of compensation is not just and needs to be enhanced. The deceased was working as Mason and the accident took place in the year 2019; that the Tribunal ought not to have fixed the notional income at Rs.10,000/- p.m., which has resulted in



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awarding meagre sum of Rs.12,60,000/- under the head, 'Loss of Income'.

The learned counsel further submitted that originally, the minor children and mother of the deceased were also claimants, and they died during the trial proceedings before the Tribunal. However, the Tribunal has apportioned Rs.4,50,000/- towards their share and stated that the Insurance Company is not liable to pay their share of compensation to the claimants 2 to 4, as they are no more. The learned counsel submitted that such approach of the Tribunal is erroneous and prayed that the remaining claimants ought to have been paid compensation in terms of the award.

9. First respondent remained ex parte before the Tribunal, hence, notice to first respondent is dispensed with. The learned counsel for the appellant has also made an endorsement to that effect.

10. Mrs.R.Sreevidhya, learned counsel for second respondent/Insurance Company submitted that the award of the Tribunal fixing the notional income of the deceased at Rs.10,000/- p.m. is just and reasonable. She further submitted that since the dependents 2 to 4, viz., two



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minors and mother of the deceased are no more, the Tribunal rightly dismissed the Claim Petition in respect of them. Further, it is submitted that since there are only two claimants, the Tribunal ought to have deducted only 1/3rd towards personal expenses of the deceased instead of 1/4th. Other than that, the award of the Tribunal is just and need not be interfered with and prayed for dismissal of the Appeal.

11. Heard the learned counsel appearing for the appellants/claimants and the learned counsel for the second respondent/Insurance Company and perused the materials placed on record.

12. The only question that arises for consideration in the instant Appeal is, whether the quantum of compensation awarded by the Tribunal is just and reasonable?

13 (a) The appellants have established that the deceased was working as Mason through the evidence of P.W.1/wife of the deceased. However, no proof has been filed to establish the income of the deceased. The accident



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took place in the year 2019. Considering the cost inflation index and judgment of this Court in **C.M.A.No.2636 of 2022**, in the case of **Petchiammal and others Vs. M.Sathiyamoorthy and another** dated **17.07.2023**, wherein, the Division Bench of this Court has taken the notional income of the deceased at Rs.17,000/- p.m., who died in the accident occurred in the year 2019 and worked in a Private Concern, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased at Rs.15,000/- p.m. as in the present case, the deceased was Mason and died in the year 2019.

13 (b). The deceased was aged 44 years and hence, the appellants are entitled to future prospects at 25% and the multiplier applicable is '14'. Though the learned counsel for second respondent submitted that only 1/3rd should be deducted towards personal expenses of the deceased since the claimants at the time of passing of the award were only two in numbers, this Court is of the view that subsequent death of the minors/dependents is not a reason for reduction of compensation, in the light of law laid down by the Hon'ble Supreme Court, in **Kirti and another Vs. Oriental Insurance**



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Company Ltd., reported in **(2021) 2 SCC 166**, wherein, at para No.9 and

10, it is held as follows:-

"We have thoughtfully considered the rival submissions. It cannot be disputed that at the time of death, there in fact were four dependents of the deceased and not three. The subsequent death of the deceased's dependent mother ought not to be a reason for reduction of motor accident compensation. Claims and legal liabilities crystallise at the time of the accident itself, and changes post thereto ought not to ordinarily affect pending proceedings. Just like how appellant claimants cannot rely upon subsequent increases in minimum wages, the respondent insurer too cannot seek benefit of the subsequent death of a dependent during the pendency of legal proceedings. Similarly, any concession in law made in this regard by either counsel would not bind the parties, as it is legally settled that advocates cannot throw away legal rights or enter into arrangements contrary to law.

11. Any compensation awarded by a Court ought to be just, reasonable and consequently must undoubtedly be guided by principles of fairness, equity, and good conscience. 3 Not only did the family of the deceased consist of septuagenarian parents, but there were also



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two toddler girls, aged merely 3 and 4 years; each of whom requires exceptional care and expenditure till they reach the stage of selfdependency. Tragically, in addition to the married couple, the negligence of the driver also extinguished the life of the family's third child who was a foetus in Poonam's womb at the time of the accident. Thus, the appropriate deduction for personal expenses for both Vinod and Poonam ought to be 1/4th only, and not 1/3rd as applied by the Tribunal and the High Court, more so when there were four family members dependent on the deceased."

13 (c) Thus, the award of compensation under the head, 'Loss of Income " has to be assessed as follows:-

$$\begin{aligned} & \text{Rs.15,000/- (monthly income)+ Rs.3,750/-(25\% future prospects)} \\ & \times 12 \times 14(\text{multiplier}) \times \frac{3}{4} (\text{dependency}) = \text{Rs.23,62,500/-} \end{aligned}$$

13 (d) Therefore, the award of the Tribunal under the head, 'Loss of Income' at Rs.12,60,000/- is modified and enhanced to Rs.23,62,500/-. The Tribunal has awarded Loss of consortium to the first claimant/wife at



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Rs.40,000/-. The second appellant, father of the deceased is also entitled to a sum of Rs.40,000/- towards 'Loss of Consortium'. However, award of compensation under the head, 'Loss of love and affection' to five claimants at Rs.20,000/- each is set aside and the compensation awarded under the head, 'Funeral Expenses' is reduced from Rs.25,000/-to Rs.15,000/-. It is seen from the impugned award that no award was passed by the Tribunal, under the head, 'Loss of Estate' and hence a sum of Rs.15,000/- is awarded under the said head. Further, the Tribunal had apportioned a sum of Rs.1,50,000/- each towards the share of the minors and mother of the deceased, however, deducted the same from the total compensation. As rightly pointed out by the learned counsel for the appellants/claimants the said approach of the Tribunal is erroneous. Certainly, dependents, who died during the pendency of the proceedings, are entitled to the compensation determined by the Tribunal, as per the decision of the Hon'ble Supreme Court, in **Kirti's case (cited supra)**. Hence, the appellants are entitled to the compensation, which is modified as follows:-



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed/enhanced/granted/reduced/set aside
1	Loss of Income	12,60,000	23,62,500/-	Enhanced
2	Loss of Consortium to wife	40,000	40,000	Confirmed
3	Loss of Consortium to father	-	40,000/-	Granted
4	Loss of Love & affection	1,00,000/- (20,000 x 5)	-	Set aside
5	Loss of Estate	-	15,000	Granted
6	Funeral Expenses	25000	15,000	Reduced
	Deduction towards share of claimants 2 to 4	13,85,000 4,50,000		Granted
	Total	9,75,000	24,72,500	Enhanced

13 (f) Out of the said award of compensation of Rs.24,72,500/- the first appellant, wife of the deceased is entitled to a sum of Rs.20,00,000/- and the second appellant, father of the deceased is entitled to the balance sum of Rs.4,72,500/-



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14. With the above modification, this Civil Miscellaneous Appeal

is partly allowed and the compensation awarded by the Tribunal at Rs.9,75,000/- is hereby enhanced to Rs.24,72,500/- 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 shares along with proportionate interest and costs, less the amount if any, already withdrawn, by making proper application before the Tribunal. The appellants are directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

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sd

Index : Yes/No



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WEB COPY To

The learned Special District Judge,
Motor Accident Claims Tribunal, Salem.



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Sunder Mohan,J.,
sd

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