



CMA No.2668 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.2668 of 2022

1. Jayammal
2. Maadhu
3. Kumar
4. Mathi
5. Suganthi
6. Sumathi
7. Aasaithambi
8. Palanisamy

..

Appellants

Vs.

1. M. Govindan
2. The Oriental Insurance Company Limited  
Thuraiyur Main Road, Namakkal Town,  
Namakkal

..

Respondents

**PRAYER:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to enhance the compensation in the judgment and decree dated 21.01.2021 made in M.C.O.P No.1009 of 2015, on the file of MACT / Additional District Court at Namakkal with interest and cost by allowing this appeal.

For Appellants : Mr.M.Lokesh

For R2 : Mr.G.Ponnambala Thiyagarajan



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**JUDGMENT**

This Civil Miscellaneous Appeal has been filed by the claimants challenging the quantum of compensation granted by the Tribunal in the award dated 21.01.2021 made in M.C.O.P No.1009 of 2015, on the file of MACT / Additional District Court, Namakkal.

2.The appellants filed a claim petition in M.C.O.P No.1009 of 2015 on the file of MACT / Additional District Court at Namakkal claiming a sum of Rs.25,00,000/- as compensation for the death of one perumal, who died in the accident that took place on 21.04.2015.

3. According to the appellants, on 21.04.2015, at about 5.00am, while the deceased was walking on a public road, the two wheeler bearing Registration No. TN 25 AM-1445 insured with the 2<sup>nd</sup> respondent herein ridden in a rash and negligent manner, dashed against the deceased, as a result of which, the deceased sustained fatal injuries.



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4. Before Tribunal, the appellants examined the 3<sup>rd</sup> appellant as P.W.1 and one Ajith Kumar as P.W.2 and marked Ex.P1 to Ex.P11. The 2<sup>nd</sup> respondent examined R.W.1 and did not mark any document.

5. The Tribunal, after considering the oral and documentary evidence, held that the accident took place due to the negligence of the rider of the two wheeler insured with the 2<sup>nd</sup> respondent herein and directed the 2<sup>nd</sup> respondent Insurance company to pay a compensation of Rs.8,02,800/-(Rupees Eight Lakhs Two thousand and eight hundred only). Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

6. The learned counsel for the appellants submitted that though the appellants had established that the deceased was working as a mason and earning Rs.15,000/- per month, the Tribunal had fixed a very meagre notional income of Rs.8000/- per month and sought for enhancement.



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7. The learned counsel for the appellants submitted that since the 1<sup>st</sup> respondent remained exparte before the Tribunal, notice to 1<sup>st</sup> respondent may be dispensed with and he also made an endorsement to the said effect. Hence, notice to 1<sup>st</sup> respondent is dispensed with.

8. Per contra, the learned counsel for the 2<sup>nd</sup> respondent/Insurance company submitted that the award of the Tribunal is just and reasonable. The appellants had not established the fact that the deceased was working as a mason. The evidence belies the version of the appellants and therefore, prayed for dismissal of the appeal.

9. The only question in the instant appeal is whether the amount of compensation awarded by the Tribunal is just and reasonable?

10. On perusal of the records, it is seen that though the appellants have stated that the deceased was working as a mason, no document has been filed either to prove the avocation or income. However, considering the age at the time of accident and the fact that P.W.1 was examined to show that the



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deceased was working as mason, this Court is of the view that it would be just and reasonable to fix Rs.10,000/- as notional income. The deceased was aged 60 years. The deceased would be entitled to 10% enhancement towards future prospects and the applicable multiplier is '9'. Thus, deducting 1/4<sup>th</sup> towards personal expenses, the compensation under the head 'loss of dependency' is calculated as follows:-

$$\text{Rs.10,000} + 1000(10,000 \times 10\%) \times 12 \times 9 \times \frac{3}{4} = \text{Rs.8,91,000/-}$$

11.The Tribunal has awarded a meagre sum of Rs.10,000/- each towards parental consortium to the appellants 2 and 3/the children of the deceased. Hence, a sum of Rs.40,000/- each is awarded under this head and the award under the head parental consortium is enhanced to Rs.80,000/- (Rs.40,000\*2). The compensation awarded under the other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.8,02,800/- to Rs.10,41,000/-. Break-up is as follows:-



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| Sl. No | Description                                                           | Amount awarded by Tribunal (Rs)               | Amount awarded by this Court (Rs)             | Award confirmed or enhanced or granted |
|--------|-----------------------------------------------------------------------|-----------------------------------------------|-----------------------------------------------|----------------------------------------|
| 1.     | Loss of Dependency                                                    | 7,12,800/-                                    | 8,91,000/-                                    | Enhanced                               |
| 2.     | Loss of estate                                                        | 15,000/-                                      | 15,000/-                                      | Confirmed                              |
| 3      | Funeral Expenses                                                      | 15,000/-                                      | 15,000/-                                      | Confirmed                              |
| 4.     | Spousal consortium to the 1 <sup>st</sup> appellant.                  | 40,000/-                                      | 40,000/-                                      | Confirmed                              |
| 5.     | Parental consortium to 2 <sup>nd</sup> and 3 <sup>rd</sup> appellants | 20,000/-<br>(at the rate of Rs.10,000/- each) | 80,000/-<br>(at the rate of Rs.40,000/- each) | Enhanced                               |
|        | <b>Total</b>                                                          | <b>8,02,800/-</b>                             | <b>10,41,000/-</b>                            | <b>Enhanced by Rs.2,38,200/-</b>       |

12. With the above modification, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,02,800/- 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 2<sup>nd</sup> respondent/Insurance company is directed to deposit the compensation amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within



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a period of six weeks from the date of receipt of a copy of this judgment. The first appellant, wife of the deceased would be entitled to Rs.8,00,000/-.The 2<sup>nd</sup> and 3<sup>rd</sup> appellants would be entitled to Rs.80,000/- each and the balance amount would be divided equally between the appellants 5 to 9 together with proportionate interest. On such deposit, the appellants shall be entitled to withdraw the compensation amount as per the aforesaid apportionment along with 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.

**15.09.2023**

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

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To

1. The Motor Accidents Claims Tribunal,  
Additional District and Sessions Court, Ariyalur.
2. The Section Officer,  
VR Section,  
High Court, Madras.



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**SUNDER MOHAN, J.**

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