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CMA.No. 521 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.03.2023**

CORAM:

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

C.M.A.No. 521 of 2023

- | | | |
|---|-----|-----------------|
| 1. M.R. Muthusami
M.Dhanalakshmi (died) | | ... Appellants |
| | Vs. | |
| 1. Parveen Travels Pvt. Ltd.,
No. 115/6, Santhavellore Village,
S.V. Chathiram, Sriperumbadur TK.
Kancheepuram Dt. 602 105 | | |
| 2. The New India Assurance Co. Ltd.,
(Motor Accidents Third Party Cell),
No. 45, Moore Street, 5 th Floor,
Chennai – 1. | | ... Respondents |

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 03.07.2019 made in M.C.O.P.No. 7024 of 2014, on the file of the Motor Accidents Claims Tribunal, (Small Causes Court, Special Sub Judge No. 1) Chennai.

For Appellants	:	Mr. K. Varadhakamaraj
For Respondents	:	Mr. C. Johnson for R2 R1- No appearance



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JUDGMENT

[Judgment of the Court was delivered by K. GOVINDARAJAN THILAKAVADI]

The above Civil Miscellaneous Appeal is preferred against the order of the Tribunal in M.C.O.P.No. 7024 of 2014 dated 03.07.2019 on the file of the Motor Accidents Claims Tribunal, (Small Causes Court, Special Sub Judge No. 1), Chennai.

2. The claimants in the Tribunal are the appellants in the appeal. In the impugned order, the Claims Tribunal has directed the second respondent to pay a sum of Rs. 49,45,000/- as compensation to the appellants for the accident occurred on 22.07.2014. Aggrieved by the insufficient compensation awarded by the Tribunal, the claimants have preferred this present appeal.

3. The facts of the case is that on 22.07.2014, at about 7:30 hours, while the deceased was riding his two wheeler bearing Registration No. TN-55-X-7506 at Cemetery Road in the west to east direction, and while nearing the Big Bazaar, the offending vehicle bearing Registration No.TN-21-



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AU-0262 came behind the deceased in a high speed and in a rash and negligent manner and hit the two wheeler, in which the deceased sustained grievous injuries and died on the spot.

4. To prove the case of the petitioners/claimants, the petitioners have examined P.W.1 to P.W.3 and relied upon 24 documents marked as Exs. P1 to P24.

5. The claim of the petitioners was resisted by the second respondent in the counter by stating that the accident happened only due to the negligent act of the deceased, who was riding the motorcycle in a rash manner without wearing helmet. Thereby, violating the traffic rules.

6. On completing the evidence on both sides and hearing the arguments advanced by the petitioners' and respondents' counsel and scrutinizing the documents marked on either side, the Tribunal passed an award for a sum of Rs. 49,45,000/- payable by the second respondent at the rate of 7.5 per cent per annum from the date of claim till the date of realization.



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7. The only challenge made by the appellant/claimant before this Court is that the Tribunal without taking note of the pay slip of P.W.3, who is receiving a salary of Rs. 55,224/- per month and the deceased who is also a meritorious M.B.B.S. student could have earned nearly the salary like that of P.W.3., has erroneously fixed the salary of the deceased at the rate of Rs. 30,000/- per month.

8. On the other hand, the learned counsel appearing for the second respondent would contend that a just compensation is awarded by the Tribunal and therefore calls for no interference.

9. Upon perusing the records and hearing the arguments advanced on both sides, in our considered opinion, we think fit that if the salary of the deceased is fixed at Rs.40,000/- per month, it would be reasonable. Accordingly, loss of dependency is calculated is as follows:

The notional income of the deceased is fixed at Rs.40,000/- plus 50% future prospectus would be added, as per **Pranay Sethi's case**, which comes to Rs. 60,000/-. Thus, the annual income of the deceased would be Rs.7,20,000/- (60,000*12). Out of the said amount, as per **Sarla Verma's Case**, since the deceased was Bachelor at the time of the accident, 50% has



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to be deducted as personal and living expenses of the deceased, which comes to Rs. 3,60,000 (Rs.7,20,000-Rs.3,60,000/-). As per **Sarla Verma's** case, since the age of the deceased was 24 at the time of accident, multiplier 18 is adopted. Therefore, loss of dependency comes to Rs.64,80,000/-(Rs.3,60,000*18).

10. In respect of other heads, the amount granted towards Loss of Love and Affection Rs.50,000/-, towards Loss of Estate Rs. 15,000, towards Transport charges Rs. 5,000/- and towards Funeral Expenses Rs.15,000/- is confirmed by this Court.

11. Thus, the compensation under various heads awarded by the Tribunal is modified by this Court is as follows:

Sl.No	Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs
1	Loss of income	48,60,000/-	64,80,000/-
2	Loss of Love and Affection	50,000/-	50,000/-
3	Loss of Estate	15,000/-	15,000/-



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Sl.No	Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs
4	Transport charges	5,000/-	5,000/-
5	Funeral charges	15,000/-	15,000/-
	Total	49,45,000/-	65,65,000/-

12. In view of the above, compensation amount awarded by the Tribunal is enhanced from Rs.49,45,000/- to Rs.65,65,000/-. Thus, the award passed by the Tribunal is modified and consequently, the Civil Miscellaneous Appeal is partly allowed. The respondent insurance company is directed to deposit the entire compensation amount at the rate of 7.5% interest per annum from the date of claim till the date of realization payable by the second respondent, within a period of six weeks from the date of receipt of a copy of this Judgment, less if any amount already deposited. On such amount being deposited, the appellant is permitted to withdraw the amount as modified by this Court along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.



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13. With the above, the Award of the Tribunal is modified.

Consequently, the Civil Miscellaneous Appeal is partly allowed. No costs.

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

28.03.2023

Intex : Yes/No
Internet : Yes/No
mrn

To

1. Motor Accidents Claims Tribunal,
(Small Causes Court, Special Sub Judge No. 1) Chennai.

2.V.R.Section,
Madras High Court,
Chennai.



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D.KRISHNAKUMAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.
(mrn)

JUDGMENT MADE IN
C.M.A.No. 521 of 2023

28.03.2023