



C.M.A.No.215 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.02.2023

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.215 of 2023

1.K.Murugesan
2.M.Jayakumar
3.M.Dhivyabharathi

...Appellants

Vs.

1.Nalini
2.National Insurance Company Limited,
D.No.74-A, Paramathi Road,
Namakkal town, Namakkal Taluk.

[The 1st respondent remained ex-parte before the Tribunal.
Hence may be dispensed with for R1]

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award in Judgment and Decree dated 15.11.2021 made in M.C.O.P.No.1639 of 2016, on the file of Motor Accident Claims Tribunal/Additional District Court at Namakkal.

For Appellants	: Mr.Ma.P.Thangavel For Mr.M.Lokesh
For R2	: Mr.S.Vadivel



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JUDGMENT

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This Appeal has been filed against the award dated 15.11.2021 made in M.C.O.P.No.1639 of 2016, on the file of Motor Accident Claims Tribunal/Additional District Court at Namakkal.

2.The claim Petitioners are the Appellants herein, seeking enhancement of compensation. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3.The claim Petitioners are the legal representatives of the deceased Tailore, who died in the road traffic accident on 30.09.2016. After trial, the Tribunal has awarded a sum of Rs.13,37,000/- as compensation in M.C.O.P.No.1639 of 2016 filed by the claimants. Having not satisfied with the quantum, the claim Petitioners preferred the present Appeal.

4.Mr.S.Vadivel, learned counsel takes notice on behalf of the 2nd Respondent/Insurance Company.

5. Heard the learned counsel appearing on behalf of both sides and perused the materials available on record.



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6. The first petitioner is the husband of the deceased Selvi who died in the road transport accident happened on 30.09.2016. While the Petitioners 2 and 3 are the son and daughter of the deceased person.

7. During the trial, on the side of the Petitioners, PW1 was examined and Ex.P.1 to Ex.P7 were marked. On the side of the Respondent R.W.1 and R.W.2 were examined and Ex.R1 and Ex.R4 were marked.

8. The Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the first respondent and the vehicle in question is insured with the second respondent/Insurance Company and accordingly, the Tribunal held that both the respondents are jointly and severally liable to pay the compensation.

9. As per the evidence of PW1, deceased was working as a Tailore at the time of the accident. Hence, a sum of Rs.9,000/- is taken as the notional income of the deceased and as per the judgment of the Hon'ble Supreme Court in the case of ***Sarla Verma & Others .Vs. Delhi Transport Corporation & another***, reported in ***2009 (2) TNMAC 1 (SC)***, right multiplier is "14" and the same is adopted and 1/3rd deduction towards personal expenses is also adopted.



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10. The deceased Selvi was working as Tailore and the Tribunal has taken the notional income as Rs.9,000/-. Taking into consideration the date of the accident being 30.09.2016, the notional income is now fixed at Rs.12,000/- . At the time of the accident, he was aged about '44' years and accordingly 25% future prospectus is to be added. Accordingly, the loss of income is arrived at Rs.16,80,000/- $(12,000 + 3000 = 12100) \times 12 \times 1/3 \times 14 = 16,80,000/-$.

11. A sum of Rs.44,000/- each is awarded to Petitioners 1 to 3 towards 'loss of love and affection'.

12. The amounts granted by the Tribunal under the heads 'Funeral expenses', 'Loss of estate' are confirmed. This Court hereby awards Rs.10,000/- towards 'Transport expenses'.



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13. The break-up of the compensation is as follows:

<i>S. No.</i>	<i>Head</i>	<i>Awarded by the tribunal</i>	<i>Awarded by this Court</i>
1.	Loss of income	12,60,000/-	16,80,000/-
2.	Loss of Love and affection	40,000/-	1,32,000/- (44,000 x 3)
3.	Funeral expenses	15,000/-	15,000/-
4.	Loss of estate	15,000/-	15,000/-
5.	Transport expenses	----	10,000/-
	Total	Rs.13,37,000 (40000+15000 +15000= Rs.70000*10%) =Rs.77,000)	Rs.18,52,000/-

In total, the claimants are entitled to a sum of Rs.18,52,000/- (Rupees Eighteen lakhs and fifty two thousand only). Interest at the rate of 7.5% per annum fixed by the Tribunal is also confirmed.

14. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed enhancing the award amount from **Rs.13,37,000/-** to **Rs.18,52,000/-** with interest at the rate of 7.5% p.a., from the date of petition till the date of realisation. No costs.



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(ii) Before the tribunal, R1 was remained ex-parte and hence, may be dispensed with. This Civil Miscellaneous Petition has been filed along with a petition for condoning the delay of 161 days. However, the delay has been condoned on condition that the claim petitioners are not entitled for interest for the delay period of 161 days.

(iii) the 2nd Respondent/insurance company is directed to deposit the modified enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iv) on such deposit being made, the first claimant/first appellant is entitled to a sum of Rs.8,52,000/- and the second and third claimants/appellants are entitled to a sum of Rs.5,00,000/-each. The appellants are permitted to withdraw their respective share amount with interest, less the amount already withdrawn by them, on filing appropriate application before the tribunal.



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(v) the appellants/claimants are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

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Index : Yes/No

Internet : Yes/No

Neutral Citation:Yes/No

Speaking Order: Yes/no

To

1. The Motor Accident Claims Tribunal
Principal District Judge, Cuddalore.
2. The Section Officer,
V.R.Section, High Court of Madras,Chennai.



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RMT.TEEKAA RAMAN,J,

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Pre-delivery Judgment made in
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