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C.M.A.No.1517 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1517 of 2023

- 1.Nandipanga Geetha
- 2.Nandipanga Suresh
- 3.Nandipanga Pushpa
- 4.Nandipanga Gunasundaramma

...Appellants/Petitioners

Vs.

1.M.V.Ramana Reddy,

2.National Insurance Co.Ltd.,

No.66 Grems Road, Murugesan Naicken Complex

1st Floor, Chennai – 600 006.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.03.2022 passed in M.C.O.P.No.1492 of 2019 by the Motor Accident Claims Tribunal, Chennai (in the Chief Court of Small Causes, Chennai – 104).



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For Appellants : M/s.Sunithi Abirami for
Mr.C.Richard Suresh Kumar

For Respondents : R1-Exparte
M/s.D.Bhasakaran for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 11.03.2022 made in M.C.O.P.No.1492 of 2019 on the file of the Motor Accident Claims Tribunal, Chennai (In the Chief Court of Small Causes), Chennai.

2. The appellants filed M.C.O.P. No.1492 of 2019 on the file of the the Motor Accident Claims Tribunal, Chennai, (In the Chief Court of Small Causes), Chennai claiming a sum of Rs.75,00,000/- as compensation for the death of one Nandipanga Mani, who died in the road accident that took place on 12.07.2017.



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3. According to the appellants, on 12.07.2017 at about 5.30 a.m, while the deceased Nandipanga Mani was travelling as a passenger in Bolero Pickup bearing Regn.No.AP07–TF–1024 from Diguva Mallavaram to Srikalahasthi at Thirupati to Naidupetta Bypass Road, Mittakandriga Village, the driver of the lorry bearing Registration No.AP16 – TJ – 0659 drove the same in a rash and negligent manner and dashed behind the Bolero Pickup and caused the accident. In the above said accident, the said Nandipanga Mani sustained grievous injuries and died on the spot. Hence, the appellants filed claim petition claiming compensation against the respondents.

4.The 1st respondent remained ex-parte before the Tribunal.

5. The second respondent/Insurance Company filed a counter statement denying all the averments made by the appellants in the claim petition. According to the second respondent, the accident had occurred at Tirupati to Naidupetta Bypass Road, Mittakandriga Village, Srikalahasthi Mandal, Tirupathi Urban District, Andhra Pradesh within the Jurisdiction of



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Srikalahasthi Town Police Station, Tirupathi Urban District, Andhrapradesh,

the accident was registered in Cr.NO.166 of 2017, the first respondent, the owner of the lorry was residing at Plot No.178/179 1st Cross Lane, 4th Road, Jawahar Auto Nagar, Vijayawada, Nalagonda District, Telangana 508 206 and the policy issuing office is also not situated within the jurisdiction of the Hon'ble Court. Hence, the second respondent denied all the allegations and averments contained in the claim petition except those that were specifically admitted therein and the age, occupation, nature of relationship with the deceased were all denied by the second respondent. Thus, the total compensation claimed by the appellants are highly excessive and prayed for dismissal of the claim petition.

6. The 1st appellant examined herself as P.W.1 and one Pamujula Janardhana Naidu/eye-witness to the accident was examined as P.W.2. Ten documents were marked as Exs.P.1 to Exs.P.10. Neither documents were marked nor witnesses were examined on the side of the respondents.



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7. The Tribunal after considering the evidence and documents filed on the side of the appellants 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 to pay a sum of Rs.14,53,600/- as compensation to the appellants.

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

9. M/s.Sunithi Abirami, the learned counsel for the appellants submitted that the award of compensation by the Tribunal is meagre; that though the appellants have established that the deceased was aged 48 years at the time of accident, he was doing milk vending business and was also a cattle broker and earning Rs.25,000/- per month, the Tribunal had fixed only Rs. 9,000/- per month as notional income. The learned counsel further submitted that the Tribunal erroneously had added only 20% towards future prospects whereas the deceased is entitled to 25% future prospects as per the



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Judgment of Hon'ble Supreme Court in *National Insurance Co. Ltd., Vs.*

Pranay Sethi and others reported in **2017 (2) TN MAC 609 (SC)**. Therefore, the learned counsel prayed for enhancement of compensation.

10. M/s.D.Bhaskaran, the learned counsel for the second respondent/ Insurance Company submitted that the award of the Tribunal is just and reasonable; that the appellants have not produced any evidence either to prove the avocation or the income of the deceased. For the reasons, best known to the appellants that they had filed the claim petition in Chennai although they were residing in Andhra Pradesh. Therefore, the learned counsel submitted that there is no reason to interfere with the award of compensation and prayed for dismissal of the appeal.

11. Though notice has been served privately on the first respondent, there is no representation for the first respondent either in person or through counsel. The learned counsel for the appellants filed a verified petition dated 22.12.2022 that Court notice to the first respondent may be dispensed with since he remained exparte before the Tribunal.



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12. Heard the learned counsel appearing for the appellants as well as

2nd respondent and perused the materials available on record.

13. The short question involved in the instant appeal is whether the quantum of compensation awarded by the tribunal is just and reasonable.

14. From the materials on record, it is seen that the Tribunal, considering the age of the deceased and his avocation, fixed the notional income as Rs.9000/- per month for the accident which took place in the year 2017. It is also seen from the records that the appellants have not produced any documents to prove the avocation or the income of the deceased. However P.W.1, the wife of the deceased has stated that the deceased was doing milk vending business and was also a cattle broker. Considering the age of the deceased, the avocation, the cost inflation index, and the number of dependants, this Court is of the view that it would be just and reasonable to fix the notional income as Rs.12,000/- per month. The deceased was aged 48 years at the time of the accident and therefore 25% has to be added towards future prospects. As per the Judgment of Hon'ble Supreme Court in *Sarla*



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Verma Vs. Delhi Transport Corporation (cited supra), the multiplier applicable is "13". In view of the number of dependants, $\frac{1}{4}$ th of his income has to be deducted towards personal expenses. Therefore, the compensation under the head Loss of Dependency is calculated as follows:

$$\text{Rs.12,000} + \text{Rs.3,000} (25 \% \times \text{Rs.12,000}) \times 12 \times 13 \times \frac{3}{4} = \text{Rs.17,55,000/-}$$

15. The compensation awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.,14,53,600/- to Rs.19,45,000/-, 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.	Loss of Income/ Dependency	12,63,600/-	17,55,000/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Loss of consortium (Rs.40000 X 4)	1,60,000/-	1,60,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	14,53,600/-	19,45,000/-	Enhanced by



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Rs.4,91,400/-

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16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,53,600/- is hereby enhanced to Rs.19,45,000/-. The second respondent /Insurance Company is directed to deposit the enhanced award amount, along with interest and costs (excluding the default period if any) 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 first appellant is permitted to Rs.10,00,000/-, the appellants 2 and 3 are each permitted to withdraw Rs.4,00,000/- and the 4th appellant is permitted to withdraw Rs.1,45,000/- along with proportionate interest and costs. 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

Neutral Citation: Yes / No

SUNDER MOHAN, J

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To

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1. The Motor Accident Claims Tribunal, Chennai
(In the Chief Court of Small Causes, Chennai – 104).
2. The Section Officer,
VR Section,
High Court,
Madras.

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