



C.M.A.No.304 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 14.02.2023	Pronounced on 03.03.2023
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

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1.V.Geetha,
W/o.Vijayakumar
2.Minor Sakthivel,
S/o.Vijayakumar
3.Minor Naveen Kumar
S/o.Vijayakumar
4.G.Saraswathi,
W/o.Gopinath
(Minor Petitioners 2 & 3
Rep. by their mother and next friend 1st Petitioner V.Geetha)
All are residing at
No.47, Chinnamman Koil Street,
24th Street, J.P.Estate, Avadi,
Chennai 600 054.

... Appellants

Vs.

1.C.N.Narasimhan
No.2/248, Venugopal Nagar
Veerapuram, IAF, Avadi
Chennai 55.

2.United India Insurance Co. Ltd.,
No.45, Moore Street,
Chennai 1.

... Respondents



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Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 18.08.2014 made in MCOP.No.419 of 2012 on the file of the Motor Accident Claims Tribunal (II Additional District Judge), Poonamallee.

For Appellants : Mr.K.Varadhakamaraj

For Respondents : Mr.J.Michael Visuvasam (for R2)

J U D G M E N T

The Appeal has been filed against the Decree and Judgment dated 18.08.2014 made in MCOP.No.419 of 2012 on the file of the Motor Accident Claims Tribunal (II Additional District Judge), Poonamallee.

2.The claim Petitioners are the Appellants herein and they filed this Appeal, seeking enhancement of compensation awarded in MCOP.No.419 of 2012. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.



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3.The legal representatives of the deceased G.Vijayakumar filed MCOP.No.419 of 2012, seeking compensation and filed this Appeal on the point of quantum of compensation and contributory negligence.

4.The factum of the accident, manner of the accident are not under challenge in this Appeal. Accordingly, the findings rendered by the trial Court in this regard are hereby confirmed.

5.During the trial, on the side of the claim Petitioners, PW1 & PW2 were examined & Ex.P.1 to Ex.P.5 were marked and on the side of the Respondents, RW1 was examined and Ex.R1 & Ex.R2 were marked.

6.Heard the learned counsel appearing on behalf of the claim Petitioners and the learned counsel appearing on behalf of the Insurance Company.

7.A perusal of documentary evidences as well as evidence of PW2 & RW1 coupled with Ex.R.2, reveals that the Tribunal has rightly come to the conclusion that the deceased was also responsible for the accident and fixed 20% of contributory negligence on the part of the deceased and I do not find



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any error in fixing 20% of contributory negligence. Accordingly, the same is hereby confirmed.

8.On the point of quantum of compensation, based upon Ex.P.4/driving license and the fact that the deceased was working as driver, the Tribunal has fixed notional income at Rs.10,000/- per month. For the accident occurred in the year 2012, the same is enhanced to Rs.13,000/-. As per the Constitution Bench's judgment of the Hon'ble Apex Court in the case of *National Insurance Company Limited V. Pranay Sethi and others*, reported in **2017 (2) TN MAC 609 (SC)**, 40% has to be added towards future prospects and hence the monthly income comes to Rs.18,200/- [Rs.13,000/- + 40% of 13000].

9.At the time of the accident, the deceased was aged 33 years and therefore, 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 '16' for the age of the deceased. Since there are four members in the family of the deceased, 1/4th has to be deducted towards personal expenses of the deceased and hence, the pecuniary



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loss sustained by the claim Petitioners are re-assessed as follows:

$$\text{Rs.18200/-} \times 12 \times 16 \times \frac{3}{4} = \text{Rs.26,20,800/-}$$

10.The Tribunal has awarded a sum of Rs.25,000/- towards loss of consortium to the 1st claim Petitioner, the same is enhanced to Rs.40,000/-. The Tribunal has awarded a sum of Rs.80,000/- towards loss of love and affection, the same is enhanced to Rs.1,20,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses, the same is enhanced to Rs.15,000/-. A sum of Rs.15,000/- is awarded towards loss of estate.

<i>S.No.</i>	<i>Head</i>	<i>Amount (Rs.)</i>
1	Pecuniary loss	2620800
2	Loss of consortium	40000
3	Loss Love and affection	120000
4	Funeral expenses	15000
5	Loss of Estate	15000
	Total Compensation	2810800
	80% of compensation	2248640
	Rounded off	2248700

In total, the claim Petitioners are entitled to a sum of Rs.22,48,700/- (Rupees twenty two lakh forty eight thousand and seven hundred only), with 7.5 % interest per annum. The claim Petitioners are not entitled to receive interest for the delay period of 44 in filing the Appeal.



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11. In fine,

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(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the compensation from Rs.8,00,000/- to Rs.22,48,700/-, with 7.5% interest per annum (excluding the period of default of 44 days) to the extent indicated above. No Costs.

(ii) the Insurance Company is directed to deposit the enhanced award amount, with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, all the claim Petitioners/Appellants are entitled to get their share in the enhanced award amount, as per the ratio of apportionment made by the Tribunal. The claim Petitioners 1 & 4/Appellants 1 & 4 are permitted to withdraw their entire share with proportionate interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal. The claim Petitioners 2 & 3/Appellants 2 & 3 are minors. The share of the minors shall be kept in a interest bearing fixed deposit in any of the nationalised bank, till they attain majority. The 1st claim Petitioner/1st Appellant, who is the guardian of minors, is permitted to withdraw the interest from the deposit of the minors once in three months.



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(iv) the claim Petitioners 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.

03.03.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To
The II Additional District Judge,
Motor Accident Claims Tribunal
Poonamallee.



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

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Dated: 03.03.2023