



C.M.A.No.4101 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM

**THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN**

**C.M.A.No.4101 of 2019**

1.G.Sathyanarayanan  
2.Lakshmiammal  
3.Gurrappa

... Appellants

..Vs..

1.E.Abdul Nizar  
2.The Divisional Manager,  
United India Insurance Company Ltd.,  
Divisional Office, M.K.Reddy Complex,  
Old Bangalore Road, Hosur.

... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 18.01.2010 made in MCOP.No.191 of 2005 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge, Hosur).

For Appellants : Mr.E.Rajadurai  
For Respondents : Mr. A.Dhiraviyanathan for R2  
Insufficient address - R1

### **JUDGMENT**

This appeal has been filed by the appellants/claimants seeking enhancement of compensation under the impugned award dated 18.01.2010 passed by the Motor Accident Claims Tribunal/(Subordinate Judge, Hosur) in MCOP.No.191 of 2005.



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2. The Appellants/claimants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, has preferred this appeal seeking for enhancement.

3. The case of the appellants is that on 04.10.2004 at 9.30 a.m., when the deceased Gopi was driving TVS-50 motor bike from Denkanikotta to Hosur, near Dinnur Amman Nagar, the driver of the TATA-407 Tempo bearing Regn.No.KA-05-AB-6786 came in the opposite direction with high speed in a rash and negligent manner and dashed against the TVS-50, due to which the deceased died on the spot. Claiming that the driver of the Tempo has caused the accident, the claimants have claimed a compensation of Rs.10,00,000/- before the Motor Accidents Claims Tribunal.

4. The Tribunal, based on the oral and documentary evidences has observed that the driver of the Tempo is responsible for the accident and fastened the liability on the Insurance Company as insurer of the first respondent and ultimately quantified the total compensation at Rs.3,89,600/- with interest at the rate of 7.5% per annum from the date of petition till the



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date of deposit. Aggrieved by which, the claimants / appellants are before this Court.

5. Before the Tribunal, the Appellants/claimants have examined two witnesses as PW1 and PW2 and filed six documents which were marked as Ex.P1 to Ex.P6. On the side of the second respondent/Insurance Company, neither witness was examined nor document marked.

6. The learned counsel for the Appellants/claimants has submitted that the award of the Tribunal is contrary to law, weight of evidence and probabilities of the case. The Tribunal has failed to consider the fact and circumstances of the case, which lead to the occurrence of accident. It has erred in fixing the monthly income of the deceased as Rs.3300/- without considering the fact that the deceased was a Diploma holder in computer course, considering the above fact, the court below ought to have fixed the the monthly income of the deceased as claimed. It erred in applying 12 under the multiplier method. Considering the age of the parents, according to recent Apex Court Judgment, if the bachelor is died in the accident, the



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age of the bachelor itself should be considered for applying multiplier. Hence the court below ought to have applied multiplier method considering the age of the bachelor. It failed to consider that if he would have lived, he would have earned not less than Rs.6000/- per month. Hence, the court below ought to have considered the future aspects while awarding compensation. It erred in awarding very less amount towards love and affection and funeral expenses. It erred in fixing only 7.5% interest per annum but it ought to have fixed atleast 9% interest per annum. In any event, the order of the Tribunal is liable to be set aside. Hence, he prays for enhancement of the Award amount.

7. It is contended by the Insurance Company that the Tribunal has granted reasonable compensation and thus awarded a total compensation of Rs.3,89,600/- and the same does not warrant any interference by this court.

8. A perusal of the records show that the Tribunal has not awarded any amount towards Future Prospects. As per the decision of the Constitution Bench of the Hon'ble *Supreme Court of India in National*



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**Insurance Company Limited Vs. Pranay Sethi and others** reported in

**2017 (2) TN MAC 609 (SC)**, 40% should be added towards "Future

prospects". The age of the deceased was 20 years at the time of accident and therefore, proper multiplier to be adopted in the instant case is '18', as per the decision rendered in **Sarla Varma and others vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**. The Tribunal has failed to consider that the deceased would be earning more if he would be alive. In the instant case, the deceased died as a bachelor. Therefore, 50% of income should be deducted towards personal expenses of the deceased. Since the year of the accident is 2004, this court fix the income of the deceased at Rs.5000/-. Thus, loss of dependency is calculated as  $5000 + 40\% = 2000$ ;  $5000 + 2000 = 7000$ ;  $7000 - 1/2 = 3500$ ; Thus it works out as  $3500 \times 12 \times 18 = 7,56,000/-$ . Accordingly a sum of Rs.7,56,000/- is awarded towards " Loss of dependency ".

9. However, the compensation awarded by the Tribunal towards funeral expenses and love and affection are on lower side in the considered view of this Court. As per the settled practice, the compensation towards



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funeral expenses is enhanced from Rs.5,000/- to Rs.15,000/-. Similarly, the compensation towards love and affection is enhanced from Rs.15,000/- to Rs.40,000/- by this Court. The Tribunal has erroneously failed to award any compensation towards loss of estate for which they are legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the appellants towards loss of estate.

10. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.3,89,600/- to Rs.8,26,000/- as detailed hereunder.

| <i><b>Heads</b></i> | <i><b>Amount<br/>awarded by the<br/>Tribunal</b></i> | <i><b>Award Amount<br/>(Rs.)</b></i> |
|---------------------|------------------------------------------------------|--------------------------------------|
| Loss of dependency  | 3,69,600/-<br>(3335 x12 x13)                         | 7,56,000<br>(3500 x 12 x18)          |
| Love and Affection  | 15,000/-                                             | 40,000/-                             |
| Loss of Estate      | NIL                                                  | 15,000/-                             |
| Funeral Expenses    | 5,000/-                                              | 15,000 /-                            |
| <b>Total</b>        | <b>3,89,600/-</b>                                    | <b>8,26,000/-</b>                    |

### **Conclusion:**

11. In the result, this appeal is partly allowed. However, the



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rate of interest fixed by the Tribunal for the amount awarded by the Tribunal at the rate of 7.5% is confirmed from the date of petition till the date of deposit. It is further made clear that the enhanced amount shall carry interest from the date of filing of the appeal till the date of deposit. The 2<sup>nd</sup> respondent / Insurance Company is directed to deposit the entire award amount of Rs.8,26,000/- along with interest as stated above, after deducting the amount already deposited, if any, to the credit of MCOP.No.191 of 2005 within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the appellants/claimants through RTGS within a period of two weeks thereafter. No costs.

12. Since the compensation amount now awarded is Rs.8,26,000/-, it is made clear that the claimants have to pay the appropriate Court fee in order to receive the enhanced award amount. It is further made clear that the



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enhanced amount shall carry interest from the date of filing of the appeal till

the date of deposit.

**12.06.2023**

Index:Yes/No

Internet:Yes/No

gv

To

1. The (Motor Accidents Claims Tribunal),  
(Subordinate Judge, Hosur).

2.The Section Officer  
V.R.Section,  
High Court of Madras.



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**A.A.NAKKIRAN, J.**  
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