



C.M.A.No.2774 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

**C.M.A.No.2774 of 2019**

1.Smt.Sarasu  
2.Minor Uma  
3.Minor Jayaseelan ... Appellants /  
Respondents No.3 to 5  
(Minors represented by N/F Guardian  
Mother Smt.Sarasu).

vs.

1.Kanagamani  
2.Minor Mohanraj  
(Rep.by N/F Guardian Mother Kanagamani)  
Marayee (since deceased) ... Petitioners/Claimants  
3.Nachimuthu  
4.M/s.New India Assurance Co. Ltd.,  
Konghu Complex,  
34/5, Bye Pass Road;  
Dharapuram Town and Taluk  
Erode District. ... Respondents

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 23.12.2016 made in M.C.O.P.No.1468 of 2002 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.K.Kuppusamy

For Respondents : Mrs.A.Salomi

for Mr.C.Ramesh Babu [R4]



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### **JUDGMENT**

The respondents No.3 to 5 have filed the appeal assailing the judgment and decree passed in MC.O.P.No.1468 of 2002 on 23.12.2016 by the Motor Accident Claims Tribunal, Special District Court, Salem for enhancement of compensation.

2. Originally, the claim petition was filed by one Tmt.Kanagamani along with his minor son Mohanraj and mother of the deceased Kumar, Tmt.Marayee against the owner of the lorry, its insurer and against the present appellants herein under Section 166 of Motor Vehicles Act claiming compensation of Rs.7,00,000/- for the death of Kumar during the road accident that occurred on 01.05.2002.

3. The Tribunal after hearing both sides arguments and upon consideration of oral and documentary evidence has awarded compensation for an amount of Rs.4,00,000/- in favour of the claimants and respondents 3 and 5 in the claim petition. The claim was dismissed as against the 4<sup>th</sup> respondent/Ms.Uma.



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4. The learned counsel for the appellants/respondents Shri.K.Kuppusamy, would vehemently argue that the deceased was working as a mason and earning a sum of Rs.3,000/- p.m. Future prospects of 40% may be awarded for the purpose of calculating the income of the deceased. As regards 1/3<sup>rd</sup> deduction of the income may be taken for calculation of loss of dependency and prayed for enhancement of compensation.

5. Per contra, the learned counsel for the 4<sup>th</sup> respondent/Insurance Company would strenuously contend that the 1<sup>st</sup> appellant not being the wife of the deceased Kumar cannot maintain the appeal and prayed for to dismiss the appeal.

6. Heard the arguments of the learned counsels for both sides and perused the entire materials available on record.

7. This appeal is preferred only for enhancement of compensation and the apportionment done by the Tribunal is not challenged.

8. The case of the claimants is that the husband of the 1<sup>st</sup> claimant,



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Kumar on 01.05.2002 at about 4 p.m., while he was riding his bicycle near Sreenivasa Park along the market road, a lorry bearing Reg.No.TN-57-Z-5140 which came from the opposite direction in a rash and negligent manner at a great speed, dashed against the said Kumar, by which his head got crushed and he died on the spot, is not in dispute.

9. The claim petition was filed by one Smt.Kanagamani, wife of Kumar along with her minor son and mother-in-law as against the owner and insurer of the erred vehicle as the respondents 1 and 2 and one Smt.Sarasu and her children, Ms.Uma and minor Jayaseelan have been arrayed as respondents 1 to 5.

10. On a careful perusal of the judgment, the Tribunal has discussed about the marriage of Kumar and who is the legally wedded wife and other related issues. On the side of the claimants as well as on the side of the respondents No.3 to 5, oral and documentary evidences have been let in. Relying upon the said details, the Tribunal has rightly come to the conclusion that the 1<sup>st</sup> claimant Kanagamani is the legally wedded wife of Kumar. That apart, the 1<sup>st</sup> claimant has not preferred any appeal against granting of compensation in favour of the respondents No.3 and 5 namely



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Sarasu and minor Jayaseelan. Therefore, the maintainability issue raised by the learned counsel for the 4<sup>th</sup> respondent/Insurance Company is not maintainable in law and stands rejected.

11. It is the evidence of PW1 that the deceased Kumar was working as a mason and earning a sum of Rs.5,000/- p.m. The accident had taken place on 01.05.2002. Therefore, this Court deems fit to fix the income of the deceased at Rs.3,400/- p.m. With regard to the age of the deceased, the only document which is marked as Ex.P2-Post-Mortem Certificate, wherein his age is mentioned as 36 years and it is taken as such.

12. The Hon'ble Supreme Court has standardised the details of future prospects to be added with income in respect of person who is **self-employed or on a fixed salary** in **National Insurance Co. Ltd., v. Pranay Sethi and others** reported in **2017 (2) TN MAC 609 (SC)**, wherein, for the age group of persons below 40 years, 40% to be added as future prospects, while calculating the monthly income. With regard to the deductions for personal and living expenses, the Hon'ble Supreme Court has given in specific terms in **Smt.Sarla Verma & Ors., v. Delhi Transport Corporation & Another** reported in **2009 (2) TN MAC 1 (SC)**,



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the deceased left behind his family members 2 to 3, then,  $1/3^{\text{rd}}$  can be deducted for personal and living expenses from the income computed. At the time of death he left behind his mother, wife and son. In the said case, the Hon'ble Supreme Court has also tabulated with regard to the selection of multiplicand, corresponding age groups have been given. For the age group of persons between 36 to 40, the appropriate multiplicand to be adopted is 15. Based on the above said details, for loss of dependency, the formula emerges as follows:

|                            |   |                  |
|----------------------------|---|------------------|
| Age of the deceased        | : | 36 years         |
| Multiplier to be adopted   | : | 15               |
| Monthly income fixed       | : | Rs.3,400/-       |
| Future Prospects           | : | 40%              |
| Notional Income Arrived at | : | Rs.3,400/- + 40% |
|                            |   | Rs.4,760/-       |

After deducting  $1/3^{\text{rd}}$  for

|                   |   |             |
|-------------------|---|-------------|
| Personal Expenses | : | Rs.3,173/-. |
|-------------------|---|-------------|

Loss of Dependency

|                      |   |               |
|----------------------|---|---------------|
| Rs.3,173/- X 12 X 15 | : | Rs.5,71,140/- |
|----------------------|---|---------------|

13. An amount of Rs.15,000/- is granted towards Loss of Estate. The



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1<sup>st</sup> appellant herein is arrayed as 3<sup>rd</sup> respondent. She has been examined as RW1. It is the evidence of 1<sup>st</sup> appellant namely Sarasu that she got married one Mahalingam and through him, a female child by name Uma was born to her and she married the deceased Kumar thereafter. It is the evidence of RW2 Smt.Arani that she does not know when Sarasu and Kumar got married. She feels ignorant of the place of marriage also, therefore, the Tribunal held that the 1<sup>st</sup> appellant/Sarasu is not a legally wedded wife of Kumar. In all other aspects, the amount awarded by the Tribunal appears to be reasonable, therefore, needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

| <b>Sl. No.</b> | <b>Description</b>                                           | <b>Amount awarded by Tribunal</b> | <b>Amount awarded by this Court</b> | <b>Award confirmed or enhanced or granted or reduced</b> |
|----------------|--------------------------------------------------------------|-----------------------------------|-------------------------------------|----------------------------------------------------------|
| 1              | Loss of Income                                               | Rs.3,60,000/-                     | Rs.5,71,140/-                       | <b>Enhanced</b>                                          |
| 2              | Funeral Expenses                                             | Rs. 10,000/-                      | Rs. 10,000/-                        | Confirmed                                                |
| 3              | For Consortium to the 1 <sup>st</sup> petitioner             | Rs. 20,000/-                      | Rs. 20,000/-                        | Confirmed                                                |
| 4              | Loss of love and affection to the 2 <sup>nd</sup> petitioner | Rs. 10,000/-                      | Rs. 10,000/-                        | Confirmed                                                |
| 5              | Loss of Estate                                               | NIL                               | Rs. 15,000/-                        | <b>Granted</b>                                           |
|                | <b>Total</b>                                                 | <b>Rs.4,00,000/-</b>              | <b>Rs.6,26,140/-</b>                |                                                          |



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14. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.4,00,000/-** to **Rs.6,26,140/-** which would carry interest at the rate of 7.5% per annum. It is made clear that the apportionment made by the learned Tribunal is not questioned and the apportionment made by the Tribunal stands confirmed.

15. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.4,00,000/-** to **Rs.6,26,140/-**.

(iii) The 4<sup>th</sup> respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.6,26,140/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.1468 of 2002 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimants are at liberty to withdraw the same as per apportionment made by the Tribunal after





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following due process of law. The claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants.

06.07.2023

Index : Yes/No  
Speaking / Non-speaking order  
ssn

To:

1. The Motor Accident Claims Tribunal,  
Special District Court, Salem.
2. The Section Officer,  
V.R.Section,  
High Court of Madras,  
Chennai.



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**R.KALAIMATHI, J.,**

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