



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.12.2023

CORAM

**THE HON'BLE MR.JUSTICE M.DHANDAPANI**

C.M.A.No.4545 of 2019

Adaikalamary ... Appellant

Vs

1. The owner  
Shanmugam Roadways,  
Srimushnam Road,  
Andimadam Post,  
Udayarpalayam Taluk,  
Perambalur District.

2. The Branch Manager,  
National Insurance Co. Ltd.,  
Vikneshwara Building,  
No.7, Pudukottai Road,  
Trichy.

3. Anandham @ Anandharaj  
(Whereabouts not known)

... Respondents

Civil Miscellaneous Appeal filed under Article 173 of Motor Vehicles  
Act 1988, against the judgment and award of the Motor Accident Claims  
Tribunal, (ADJ), Ariyalur in MCOP. No.179 of 2008 dated 26.10.2015.

For Appellant : Mr.Kaithaimalai Kumaran

For Respondents : Mr.Michael viswasam, R2

No appearance – RR1 & 2



This appeal has been filed by the appellant/claimant against the judgment and award of the Motor Accident Claims Tribunal, (ADJ), Ariyalur in MCOP. No.179 of 2008 dated 26.10.2015.

2. It is the case of the appellant that on 22.01.2006, at about 7.20 P.M. When the deceased Andhonisamy was trying to get up the first respondents bus registration No.TN 46 D 5677 in Varadharajanpettai bus stand, at that time the driver suddenly move the bus in a rash and negligent manner and hit against the deceased Andhonisamy and he fell down and the back wheel of the bus run over the deceased. Due to which, he sustained grievous injuries all over his body and immediately after the accident, he was admitted in the hospital and died. Thereafter, the Dependants of the deceased filed a claim petition before Tribunal claiming compensation of Rs.6,00,000/-. After adjudication, the Tribunal has awarded a sum of Rs.4,80,000/- to the claimants for the death of the deceased.

3. The appellant/claimant has filed the present appeal seeking enhancement of compensation.

4. The learned counsel for the appellant submitted that the appellant is



the wife of the third respondent. After the death of their son, the appellant and the third respondent filed claim petition and the Tribunal has also awarded a compensation of Rs.4,80,000/- and the appellant and the third respondent are entitled for Rs.2,40,000/- each.

5. The learned counsel further submitted that during pendency of the appeal, the appellant has already been withdrawn 50% of the award amount and the remaining award amount kept lying before the Tribunal. The learned counsel further submitted that whereabouts of the 3<sup>rd</sup> respondent is not traceable for withdrawing the compensation. He is not available for more than seven years. Hence, the learned counsel prays that the appellant filed this appeal for enhancement of compensation. Without going into the merits of the case, this Court may allow the appellant to withdraw the said amount.

6. The learned counsel for the second respondent have not raised any objection in this regard.

7. The facts of the case are not disputed by the parties. The appellant has filed this appeal for enhancement and seeking to modify that the appellant is entitled to withdraw the entire compensation awarded by the



Court ordered notice to the third respondent and the same was returned and his whereabouts is also not traceable for the past seven years.

8. Considering the facts and circumstances of the case, this Court is inclined to permit the appellant to withdraw 80% of the award amount, which was apportioned in favour of the third respondent, by filing appropriate application before the Tribunal and the Tribunal shall keep the remaining 20% of the award amount in the credit of the case number.

9. With the above direction and observation, the appeal is allowed. No costs.

11.12.2023

rli

Index : Yes/no

Internet : Yes/no

Speaking Order/Non speaking order

To

The Motor Accident Claims Tribunal, (ADJ), Ariyalur



WEB COPY



5

**M.DHANDAPANI.,J.**

Rli

C.M.A.No.4545 of 2019

11.12.2023