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CMA.No.3007 of 2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED :16.03.2023**

**CORAM :**

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

**Civil Miscellaneous Appeal No.3007 of 2018**  
**and**  
**CMP.No.23125 of 2018**

The Oriental Insurance Co.Ltd.,  
Old No.216, New No.115, Prakasam Salai, Broadway,  
Chennai – 600 001. ... Appellant/respondent

**-Vs-**

1. Mohamed Komij  
2. Joynur Bibi  
3. M/s.Aviation Expresses,  
No.142, Eldams Road,  
Teynampet, Chennai – 18. ... Respondents

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 03.02.2020 in MCOP.No.538 of 2011 on the file of the Motor Accident Claims Tribunal (II Additional District Judge) at Poonamallee.

For Appellant : Mr.M.Krishnamoorthy  
For Respondent : Mr.F.Terry Chella Raja  
[R1 and R2]  
R3 – *ex-parte*



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## **JUDGMENT**

**WEB COPY** This appeal is preferred against the judgment of the Motor Accident Claims Tribunal, (II Additional District Judge), Poonamallee, passed in M.C.O.P.No.538 of 2011 on 14.03.2018.

2. The short facts of the case are as follows:

The respondents 1 and 2 are the father and mother of the deceased. The first respondent is the owner of the offending vehicle and the appellant is the insurer thereof. At about 03.00 a.m., on 18.04.2011, while the deceased was digging soil for cable work in GST road at Meenambakkam, the first respondent vehicle bearing Registration No.TN-07-AM-2559 Tavera insured with the appellant, driven in a rash and negligent manner, dashed against the deceased/son of the respondents 1 and 2. Hence, the respondents 1 and 2 have filed the claim petition seeking compensation for a sum of Rs.15,00,000/-.

3. Before the tribunal, on behalf of the claimants, two witnesses were examined and five exhibits were marked. None were examined on behalf of the appellant insurance company nor were any exhibits marked.

On appreciation of materials before it, the tribunal awarded



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compensation as follows:

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|                           |   |                 |
|---------------------------|---|-----------------|
| (a) Loss of Annual Income | : | Rs. 14,28,000/- |
| (b) Loss of Consortium    | : | Rs. 40,000/-    |
| (c) Loss of Estate        | : | Rs. 15,000/-    |
| (d) Funeral Expenses      | : | Rs. 15,000/-    |
|                           |   | -----           |
|                           |   | Rs.14,98,000/-  |
|                           |   | -----           |

The said sum of Rs.14,98,000/- and was directed to be paid by the appellant/Insurance Company together with interest at 7.5% per annum from the date of petition till the date of deposit.

4. Learned counsel for the appellant submits that the deceased was aged 21 years and his occupation and income has not been proved. In the absence thereof, the Tribunal went wrong in fixing the monthly income of the deceased at Rs.7,500/- and awarding a sum of Rs.14,28,000/- under the head pecuniary benefits. Since the deceased was a bachelor, the Tribunal ought to have deducted 50% towards personal expenses, however, the Tribunal had deducted only 1/3 towards personal expenses. Learned counsel further submits that the award under the other heads is also on the higher side.



5. Learned counsel for the claimants submits that the tribunal has passed a well-reasoned award, which does not call for interference by this Court.

6. The tribunal, on the basis of Ex.P1 [First Information Report] registered against the driver of the Tavera Car insured by the appellant, found that it was the rash and negligent driving of the car and that was the cause of the accident. As rightly contended by learned counsel for appellant insurance company, since the deceased was a bachelor, 50% has to be deducted towards personal expenses. Hence, this Court deducts 50% towards personal expensed. At the same time, this Court finds that the Tribunal had adopted the multiplier '17' towards arriving at compensation under the head pecuniary loss. As the deceased was aged 21 years at the time of accident, the proper multiplier to be adopted is '18'. Accordingly, the compensation awarded under the head loss of loss of annual income is re-calculated at Rs.11,34,000/-  $(((7500 - 1/2) + 40\% * 12) * 18]$ . This Court further finds that no sum has been awarded towards loss of love and affection and hence, a sum of Rs.80,000/- [Rs.40,000/- each to respondents 1 and 2] is awarded under such head. As the deceased was a bachelor, the amount of Rs.40,000/-



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awarded under the head 'loss of consortium' is deleted. This Court finds the award under the other heads are justified.

7. Accordingly, the modified award is calculated as follows:

| <i>S.No.</i> | <i>Particulars</i>    | <i>Award of Tribunal</i> | <i>Modified amount</i> |           |
|--------------|-----------------------|--------------------------|------------------------|-----------|
| 1.           | Loss of annual income | Rs. 14,28,000/-          | Rs. 11,34,000/-        | Reduced   |
| 2.           | Loss of Consortium    | Rs. 40,000/-             | Rs. Nil                | Rejected  |
| 3.           | Loss of Estate        | Rs. 15,000/-             | Rs. 15,000/-           | Confirmed |
| 4.           | Funeral Expenses      | Rs. 15,000/-             | Rs. 15,000/-           | Confirmed |
| 5.           | Love and affection    | Rs. Nil                  | Rs. 80,000/-           | Granted   |
|              |                       |                          |                        |           |
|              |                       | <b>Rs. 14,98,000/-</b>   | <b>Rs. 12,44,000/-</b> |           |

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the tribunal is reduced from Rs.14,98,000/- to Rs.12,44,000/-. The appellant insurance company is directed to deposit the modified award amount with interest at 7.5% from the date of petition, less that already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The award amount should be apportioned equally and the respondents 1 and 2/claimants are entitled to withdraw their respective shares on due



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application. No costs. Consequently, the connected miscellaneous petitions are closed.

**16.03.2023**

mp

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



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

mp

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