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C.M.A. No.1966 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

Coram:

**THE HONOURABLE MR. JUSTICE P.VELMURUGAN**

C.M.A. No.1966 of 2019

1. Kannammal

2. Minor. Aravind

... Appellants

Vs.

1. P.Anandan

2. P.Meeradevi

3. P.Umasankar

4. Ms.ARO Granite Industries Limited

Office at Koneri Palli Post,  
Krishnagiri Main Road  
Hosur-635 117

5. United India Insurance Company Limited

Represented by Divisional Manager  
Having its office at No.46-5 III Floor,  
TKM Complex Katpadi Road,  
Vellore, Vellore District

... Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, for enhancement of compensation amount awarded in the Judgment and decree dated 06.06.2018 made in M.C.O.P. No.419 of 2015 on the file of the Motor Accident Claims Tribunal (I Additional District and Sessions Judge), Vellore.



For Appellants : Mr.R.Prabakar

For Respondents : Mr.M.Sivakumar for R1 to R3  
M/s.Sairam for R4  
R5-No Appearance

## JUDGMENT

The above Civil Miscellaneous Appeal is filed for enhancement of compensation amount awarded in the Judgment and decree dated 06.06.2018 made in M.C.O.P. No.419 of 2015, on the file of the Motor Accident Claims Tribunal (I Additional District and Sessions Judge), Vellore.

2. The respondents 1 to 3 herein are claimants. The respondents 4 and 5 herein were arrayed as respondents 1 and 2 before the Tribunal. The 1st appellant is the 2nd wife of the deceased Pachaiyappan and the 2nd appellant is her minor son and they were impleaded as respondents 3 and 4 in the claim petition as per order in I.A.No.09 of 2018 dated 15.02.2018.

3. The case of the claimants who are the sons and daughter of the deceased G.Pachaiyappan is that on 26.07.2014, at about 9.45 p.m., on the Chennai to Bangalore Road, near Kanigapuram, the deceased Pachaiyappan was riding his bicycle slowly on the extreme left side of the road. At that



time, the driver of the 4th respondent herein, who drove the car bearing Regn. No.KA-01-MG-0424 behind the deceased, with high speed, rash and negligent manner without following the road traffic rules and regulations and without blowing horn, dashed against the deceased. Due to that impact, the deceased fell down and sustained fatal injuries and died on the spot itself. A criminal case was registered against the driver of the car by the Ambur Town Police.

4. The claimants filed a claim petition before the Tribunal in M.C.O.P. No.419 of 2015 on the file of the Motor Accident Claims Tribunal (I Additional District and Sessions Judge) Vellore, claiming compensation of Rs.15,00,000/- for the death of their father namely G.Pachaiyappan against the

5. In order to substantiate the claim before the Tribunal, on the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 7 documents were marked as Ex.P1 to Ex.P7. On the side of the respondents, 1 witness was examined as R.W.1 and 2 documents were marked as Ex.R1 and Ex.R2.



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6. Before the Tribunal, the 4th respondent herein/1st respondent remained ex-parte and no counter was filed on behalf of the appellants herein/3rd and 4th respondents.

7. The Tribunal, after hearing the arguments on both sides and considering the materials available, awarded compensation of Rs.9,07,500/- to the claimants/respondents 1 to 3 herein and also to the appellants. The 5th respondent/Insurance Company was directed to pay the the award amount within interest at 7.5% per annum from the date of filing of the claim petition i.e. 04.06.2015 till the date of deposit, excluding the period of default if any. The claimants 1 to 3 and the 2nd appellant who are the sons and daughter of the deceased were granted Rs.2,00,000/- each from the above Award as their respective shares and the 1st appellant herein who is the 2nd wife of the deceased was granted Rs.1,07,500/- as her share.

8. Aggrieved by the same, the respondents 3 and 4 therein who are the 2nd wife and minor son of the deceased Pachaiyappan, have filed the present appeal.



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9. The learned counsel for the appellants submitted that the appellants and respondents 1 to 3 were the dependents of the deceased. He submitted that the deceased was working as a Security in a private detective agency and was also having a provisional shop. But, the Tribunal has fixed only Rs.6,000/- as the notional income of the deceased. The claimants produced the ID card of the deceased to prove that the deceased was working as a Security in Globe Detective Agency, Chennai. Though the Tribunal admitted that the deceased was working as a Security, fixed only Rs.6,000/- notionally which is on the lower side. During the relevant period of time, the minimum was Rs.8,000/-. Atleast the same should have been considered by the Tribunal. Further, the compensation awarded under various heads i.e. for loss of love and affection, consortium, funeral expenses etc., are also on the lower side. Therefore, the award passed by the Tribunal does not reflect the "just compensation" which warrants interference.

10. Heard the learned counsel for the appellants and the learned counsel for the respondents 1 to 4 and perused the materials available on record.



11. It is seen that the Tribunal has fixed Rs.6,000/- as the notional income of the deceased. Though the ID card of the deceased was produced by the claimants, they have failed to produce the salary certificate of the deceased and they have also not examined any witness to substantiate the avocation and income of the deceased. However, this Court is of the opinion that a man aged 48 years and having wife and 4 children might have earned much more than what the Tribunal has fixed. However, in the absence of any material or evidence to prove the income of the deceased, this Court fix the minimum income of Rs.7,500/- as the notional income of the deceased instead of Rs.6,000/-. Since the deceased was aged 48 years at the time of accident, as per the decision of Apex Court, 25% of the income is added towards future prospects and the monthly income of the deceased is arrived to Rs.9,375/- (Rs.7,500+25%). After deducting 1/4th towards personal and living expenses of the deceased, the monthly income of the deceased is fixed as Rs.7,031/-. Accordingly, Rs.10,96,836/- (Rs.7,031/-x12x13) is awards towards loss of income.

12. Further, Rs.50,000/- each is granted instead of Rs.20,000/- each, towards loss of love and affection to the respondents 1 to 3/claimants 1 to 3 (sons and daughter of the deceased) and to the 2<sup>nd</sup> appellant (2nd wife's son of



the deceased) and in total, Rs.2,00,000/- (Rs.50,000/- x 4) is awarded for loss of love and affection. A sum of Rs.40,000/- is granted towards loss of consortium to the 2nd wife of the deceased/1st appellant herein.

13. Accordingly, the Award passed by the Tribunal is re-worked as tabulated below;

| S. No. | Particulars                | Amount Awarded by the Tribunal        | Amount awarded by this Court         | Award confirmed or enhanced or granted or reduced or set aside |
|--------|----------------------------|---------------------------------------|--------------------------------------|----------------------------------------------------------------|
| 1.     | Loss of Income             | Rs.8,77,500/-<br>(Rs.5,625/-x12 x13 ) | Rs.10,96,836/-<br>(Rs.7,031/-x12x13) | <b>Enhanced</b>                                                |
| 2.     | Loss of Love and Affection | Rs.20,000/-<br>(Rs.20,000/- x4)       | Rs.2,00,000/-<br>(Rs.50,000/- x 4)   | <b>Enhanced</b>                                                |
| 3.     | Funeral Expenses           | Rs.5,000/-                            | Rs.5,000/-                           | Confirmed                                                      |
| 4      | Transport Expenses         | Rs.5,000/-                            | Rs.5,000/-                           | Confirmed                                                      |
| 5      | Loss of Consortium         | --                                    | Rs.40,000/-                          | <b>Granted</b>                                                 |
|        | Total                      | Rs.9,07,500/-                         | Rs.13,46,836/-                       | <b>Enhanced</b>                                                |

16. The award of the Tribunal is modified by enhancing the compensation amount from Rs.9,07,500/- to Rs.13,46,836/-.



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17. The 5th respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.13,46,836/- to the credit of M.C.O.P. No.419 of 2015, on the file of the Motor Accident Claims Tribunal (I Additional District and Sessions Judge), Vellore, with cost and interest at the rate of 7.5% per annum, from the date of claim petition i.e. on 04.06.2015 till the date of deposit, excluding period of default if any (from 05.12.2016 to 30.01.2017) as awarded by the Tribunal, less the amount if any already deposited, within a period of six weeks from the date of receipt of copy of this judgment.

18. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimant, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).



19. The appellants and the respondents 1 to 3 are directed to pay necessary Court fee, if any, on the enhanced compensation amount awarded by this Court. The appellants and the respondents 1 to 3 are entitled to get the compensation as per the apportionment fixed by the Tribunal.

20. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently Connected Miscellaneous Petition is closed. There shall be no order as to costs in the present appeal.

**15.09.2023**

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The Motor Accident Claims Tribunal  
(I Additional District and Sessions Judge), Vellore.

2.The Section Officer,  
VR Section, High Court, Madras.



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**P.VELMURUGAN. J.**

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