



C.M.A.(MD)No.215 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated :13.04.2023

CORAM

**THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR**

C.M.A.(MD)No.215 of 2021

1.Sheefa

2.Shanmugam

... Appellants

Vs.

1.M/s.Solaimalai Properties [P] Ltd.,  
Through its Managing Director,  
No.7, Mangayarkarasi College Road,  
Solaimalai Nagar, Paravai,  
Madurai 625 402.

2.Relience General Insurance Company Ltd.,  
Through its Branch Manager,  
No.184/9B/7, V.V.D Main Road,  
Near State Bank of India,  
Tuticorin.

... Respondents

***(R1 Ex-parte before the Tribunal. Hence, notice dispensed with)***

**Prayer:** This Civil Miscellaneous Second Appeal is filed under Section 28 of Hindu Marriage Act, and under Section 100 of Civil Procedure Code, to enhance the award amount in M.C.O.P.No.113 of 2016 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate Court), Tirunelveli, dated 27.02.2019.



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For Appellant : Mr.T.Selvakumaran  
For Respondents : Exparte- R1  
: Mr.V.Sakthivel for R2

### **JUDGMENT**

This Civil Miscellaneous Appeal has been filed seeking to enhance the compensation awarded by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate Court), Tirunelveli in M.C.O.P.No.113 of 2016, dated 27.02.2019.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

A brief substance of the claim petition, is as follows:

3. On 05.07.2016 at about 02.00 a.m., the deceased parked his TATA ACE bearing Registration No.TN-76-V-4299, on the service road meant for Ayankulam in front of Mercy Angel International School on the outskirts of Tirunelveli. At that time, a lorry bearing Registration No.TN-59-AR-6573 belonging to the first respondent and insured with the second respondent came from north to south direction in a rash and negligent



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manner and entered into the service road on the extreme eastern side of Tirunelveli-Nagercoil four way road and dashed against the TATA ACE, as a result, deceased sustained injuries. Immediately, the deceased was taken to TVMC Hospital at Palayamkottai where he succumbed to his injuries on the same day.

4. The first appellant is the wife of the deceased and the second appellant is the father of the deceased. At the time of accident, the deceased was aged about 30 years and he was a driver by his profession and thereby earning a sum of Rs.25,000/- per month. The deceased is the only breadwinner in his family. A case was also registered against the first respondent driver.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W. 2 were examined and Ex.P1 to Ex.P13 were marked. On the side of the respondents, no witness was examined and no documentary evidence was recorded.

6. The Tribunal on appreciation of entire evidence available had held that only the lorry driver was negligent in driving and awarded the



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compensation as hereunder:

| <b><i>Sl.No</i></b> | <b><i>Heads</i></b>            | <b><i>Amount<br/>Rs.</i></b> |
|---------------------|--------------------------------|------------------------------|
| 1.                  | Loss of Income<br>(7000X12X17) | 14,28,000/-                  |
| 2.                  | Funeral Expenses               | 15,000/-                     |
| 3.                  | Loss of Estate                 | 15,000/-                     |
| 4.                  | Loss of Consortium             | 40,000/-                     |
| <b><i>Total</i></b> |                                | <b><i>15,18,000/-</i></b>    |

7. Challenging the same, the present Civil Miscellaneous Appeal has been filed.

8. I have heard the learned counsel appearing on either side and perused the entire materials placed on record.

9. The Tribunal considering the evidence of P.W.1 and P.W.2 and the First Information Report filed, has proceeded with the entire evidence and came to the conclusion that the accident occurred only due to the negligent driving of the driver of the lorry. At the time of accident, the deceased was aged about 30 years and was a driver and earning a sum of Rs. 25,000/- as monthly salary. However, with regard to the fixation of



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compensation, the Tribunal had fixed the notional income at Rs.10,500/- and after deducting 1/3 towards his personal expenses, the Tribunal awarded a sum of Rs.7,000/- which is meagre.

10. This Court is of the considered view that the Tribunal ought to have considered the fact that the deceased was a driver and earning some considerable amount. This Court is of the opinion that the deceased should have earned reasonable amount more than a sum of Rs.12,000/- per month. Hence, this Court fixed the notional income of the deceased as Rs.12,000/-, taking note of the accident occurred in the year 2016 and 40% of the future prospects added as Rs.4,800/-, after deducting 1/3 for his personal expenses, the loss of income is calculated as follows:

$$\text{Rs.}11,200 \times 12 \times 17 = \text{Rs.}22,84,800/-$$

11. Accordingly, the compensation awarded by the Tribunal towards loss of income is hereby modified and enhanced from Rs. 14,28,000/- to Rs.22,84,800/-. In all other aspects, the amount awarded by the Tribunal is hereby confirmed.



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12. The details of the modified amounts, are as follows:

| Sl.No               | <i><b>Heads</b></i> | <i><b>Amount<br/>Rs.</b></i> |
|---------------------|---------------------|------------------------------|
| 1.                  | Loss of Income      | 22,84,800/-                  |
| 2.                  | Funeral Expenses    | 15,000/-                     |
| 3.                  | Loss of Estate      | 15,000/-                     |
| 4.                  | Loss of Consortium  | 40,000/-                     |
| <i><b>Total</b></i> |                     | <i><b>23,54,800/-</b></i>    |

13. Accordingly, the amount awarded by the Tribunal is enhanced from Rs.15,18,000/- to Rs.23,54,800/- (Rupees Twenty Three Lakhs Fifty Four Thousand and Eight hundred only) together with interest at 7.5% per annum from the date of petition till the date of deposit as compensation and costs.

14. The second respondent/Insurance Company is directed to deposit the compensation amount at the first instance as modified by this Court at Rs.23,54,800/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization to the credit of M.C.O.P.No.113 of 2016 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Tirunelveli, within a period of four weeks from the date of receipt of a copy of this judgment, less the amount, if any already deposited.



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On such deposit, the first claimant is entitled to a sum of Rs.15,54,800/- (Rupees Fifteen Lakhs Fifty Four Thousand and Eight Hundred only) and the second claimant is entitled to a sum of Rs.8,00,000/- (Rupees Eight Lakhs only) are permitted to withdraw their respective shares along with interest, less the amount, if any, withdrawn by them, by making necessary application before the Tribunal.

15. In the result, this Civil Miscellaneous Appeal is allowed. No costs.

**13.04.2023**  
2/2

Index : Yes/No  
Internet : Yes/No  
Speaking Order/Non speaking Order

*sbm*



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**N.SATHISH KUMAR, J.**

*sbn*

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