



C.M.A.(MD)No.349 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2023

CORAM:

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

C.M.A.(MD)No.349 of 2023

1.Ganesan  
2.Petchiammal  
3.Sutha  
4.Minor.Ramay

...Appellants/Petitioners

Vs.

1.Muthupandi  
2.The New India Assurance Company Limited,  
Through its Branch Manager,  
Office at Catholic Centre,  
Number 913 Main Road,  
Kovipatti.

...Respondents/Respondents

**PRAYER:** This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount in M.C.O.P.No.235 of 2016 on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Tirunelveli, dated 04.09.2017.

For Appellant : Mr.T.Selvakumaran

For R2 : Mr.A.Ilango



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## **JUDGMENT**

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This Civil Miscellaneous Appeal has been seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Special Sub Court, Tirunelveli in M.C.O.P.No.235 of 2016 dated 04.09.2017.

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

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i)on 08.01.2016 the deceased was travelling in the Mahindra Van returning from Kayathar from Irukankudi, the driver of the said van drove the vehicle in a rash and negligent manner and turned the vehicle in a curve. As a result, the deceased was thrown away from the van and sustained serious injuries. Thereafter, she died on 12.01.2016.

(ii)Crime was also registered against the driver of the van. The deceased was aged about 38 years and he was a tailor by profession. Hence, a compensation of Rs.40,00,000/- was claimed.



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(ii)The second respondent Insurance Company before the Tribunal admitting the accident and the insurance policy took a stand that the deceased was sitting in the edge of the seat and fell suddenly on the door. Since the door was not maintained and closed properly, the deceased fell down and hence, sustained injuries.

4. Before the Tribunal, on the side of the claimant, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P6 were marked. On the side of the respondents no oral and documentary evidence had been marked.

5.The tribunal on appreciation of entire evidence available on record found that the driver of the van was rash and negligent in driving the vehicle and awarded the compensation as indicated below:

| S.No. | Description                | Amount         |
|-------|----------------------------|----------------|
| 1.    | Loss of income             | Rs. 7,20,000/- |
| 2.    | Loss of consortium         | Rs. 1,00,000/- |
| 3.    | Loss of love and affection | Rs. 4,00,000/- |
| 4.    | Transportation charges     | Rs. 10,000/-   |



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|    |                  |                |
|----|------------------|----------------|
| 5. | Funeral Expenses | Rs. 25,000/-   |
| 6. | Medical Bills    | Rs. 28,175/-   |
| 7. | For mental agony | Rs. 16,285/-   |
|    | Total            | Rs.13,00,000/- |

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

6.I have heard the learned counsel appearing on either side and also perused the materials available on record.

7.The learned counsel for the appellant would submit that the deceased is only aged about 38 years and she was earning a sum of Rs.15,000/- per month as tailor. But, the Tribunal had fixed only Rs.6,500/- as notional income, which is very low at the relevant point of time.

8.The learned counsel for the second respondent would submit that since the income of the deceased was not established, the Tribunal had fixed a sum of Rs.6,500/- as her income. However, he fairly



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submitted that the notional income of the deceased can be increased by another sum of Rs.1,000/-.

9.In view of the above submission, now the point arises for consideration in this appeal is:

***(1) Whether the income fixed by the Tribunal is proper?***

10.Admittedly, the negligence on the part of the driver of the Van had been clearly established. The eye witness had clearly spoken that the deceased was a tailor by profession. She was aged about 38 years at the time of accident. The accident was occurred in the year 2016. Such view of the matter, the notional income fixed by the Tribunal is very low. Even minimum wages is applied, at the time the deceased would have earned more than Rs.10,000/-.

11.In such view of the matter, taking note of the fact that the deceased was a tailor by profession, the notional income of the deceased is fixed at Rs.12,000/- (Rupees Twelve Thousand only) per month.



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Considering the age of the deceased 40% (Rs.4,800/-) future prospects is added and multiplier 15 is adopted as per the dictum laid down by the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd., vs. Pranay Sethi and others*** [CDJ 2017 SCC 1220]. Since there are four claimants, 1/4 deduction is applied. Accordingly, the income of the deceased is fixed at Rs.12,600/- (Rupees Twelve Thousand and Six Hundred only). The amount granted towards loss of consortium and loss of love and affection to the claimants are excessive, therefore, the same are also reduced as stated below. In the result, the Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal is enhanced as given below:

| S.No. | Description                | Amount         |
|-------|----------------------------|----------------|
| 1.    | Loss of income             | Rs.22,68,000/- |
| 2.    | Loss of consortium         | Rs. 1,60,000/- |
| 3.    | Loss of love and affection | Rs. 1,90,000/- |
| 4.    | Transportation charges     | Rs. 10,000/-   |
| 5.    | Funeral Expenses           | Rs. 25,000/-   |
| 6.    | Medical Bills              | Rs. 28,175/-   |
| 7.    | For mental agony           | Rs. 16,285/-   |
|       | Total                      | Rs.26,97,460/- |



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13.In fine, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal is enhanced as stated above.

14.The second respondent/Insurance Company is directed to deposit the compensation amount as modified by this Court i.e., Rs.26,97,460 /- (Rupees Twenty Six Lakhs Ninety Seven Thousand Four Hundred and Sixty only) with interests and costs, excluding the period of delay, from the date of petition till the date of realization to the credit of M.C.O.P.No.235 of 2016, on the file of the Motor Accident Claims Tribunal /Special Sub Court, Tirunelveli within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the first claimant is permitted to withdraw a sum of Rs.8,97,460/- (Rupees Eight Lakhs Ninety Seven Thousand Four Sixty only) and the third and fourth claimants are entitled to withdraw a sum of Rs.8,00,000/- each (Rupees eight lakhs only) said amount, less the amount if any already withdrawn, by making necessary application before the Tribunal. The second claimant is entitled to the compensation of Rs.2,00,000/- (Rupees Two lakhs only). The Tribunal



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shall deposit the share of the minor claimant in a Fixed Deposit in any one of the Nationalized Banks, till she attains majority. The guardian of the minor is permitted to withdraw the interest accrued thereon once in three months directly from the bank. No costs.

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**N.SATHISH KUMAR,J.**

The matter is taken up for hearing today under the caption for 'being mentioned'.

2. It is represented by the learned counsel appearing for the second respondent that in the judgment dated 31.03.2023 in C.M.A.(MD).No. 349 of 2023, the award amount has been wrongly calculated.

3. In view of the same, this Court is modified the award amount in the following manner:

| S.No. | Description    | Amount         |
|-------|----------------|----------------|
| 1.    | Loss of income | Rs.22,68,000/- |



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|    |                                                     |                |
|----|-----------------------------------------------------|----------------|
| 2. | Loss of consortium to the first appellant           | Rs.40,000/-    |
| 3. | Loss of love and affection to the appellants 2 to 4 | Rs.1,20,000/-  |
| 4. | Transportation charges                              | Rs.15,000/-    |
| 5. | For funeral expenses                                | Rs.15,000/-    |
| 6. | For loss of estate                                  | Rs.15,000/-    |
| 7. | For medical bills                                   | Rs.28,175/-    |
|    | Total                                               | Rs.25,01,175/- |

4. The second respondent/Insurance Company is directed to deposit the compensation amount as modified by this Court ie., Rs. 25,01,175/- within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the first claimant is permitted to withdraw a sum of Rs. 7,01,175/- and the third and fourth claimants are entitled to withdraw a sum of Rs.8,00,000/- each, less the amount if any already withdrawn, by making necessary application before the Tribunal and the second claimant is entitled to Rs.2,00,000/-. The Tribunal shall deposit the share of the minor claimant in a Fixed deposit in any one of the Nationalized Bank, till she attains majority. The guardian of the minor is permitted to withdraw the interest accrued thereon once in three months directly from



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the Bank. The above said award amount shall carry interest at the rate of 7.5% from the date of petition till the date of realisation.

5. The Registry is directed to carry out necessary correction and issue fresh order copy.

**21.06.2023**

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NCC : Yes/Nos  
Index : Yes/No  
Internet : Yes/No  
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**N.SATHISH KUMAR, J.**

To

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- 1.The Motor Accident Claims Tribunal/  
Special Sub Court, Tirunelveli.
- 2.The Section Officer,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.

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