



C.M.A. (MD)No.1 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1 of 2023

1.Mary Joyhelina Bernado

2.Arul Aglin

3.Abinaya Elisha

4.Minor Arul Sherbal

... Appellants / Petitioners

(Minor 4th appellant is represented through
his mother and next guardian 1st appellant)

Vs.

1.Tamil Nadu State Corporation Limited,

Through its Managing Director,

Office at Ranithottam,

Nesamony Nagar,

Nagercoil.

2.Arulantham

3.Benaminal

4.Jeyamary

1/10



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5.The Branch Manager,
United India Insurance Company Ltd.,
Kanthan Complex,
New Bus Stand Opposite,
Vallyoor,
Tirunelveli District.

(R4 and R5 are impleaded vide order
of this Court date 06.04.2023 in
C.M.P.(MD)No.347 of 2023)

6.Joseph Peter Decrose

7.Rabi

8.Jino

9.Ravina

.. Respondents

(Respondents 6 to 9 are impleaded
vide order of this Court dated
17.03.2023 in C.M.P.(MD)No.2035 of 2023)

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1504 of 2019, dated 27.06.2022 on the file of the Motor Accident Claims Tribunal, (IV Additional District Judge), Tirunelveli.

For Appellants : Mr.C.Sankar Prakash

For Respondents : Mr.S.Michael Heldon Kumar for R1
Mr.J.S.Murali for R5



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JUDGMENT

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Challenging the judgment and decree passed by the Motor Accident Claims Tribunal, (IV Additional District Judge), Tirunelveli in M.C.O.P.No.1504 of 2019, dated 27.06.2022, the claimants have filed this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties are referred to herein, as per their own ranking before the Tribunal.

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

The deceased Arul Martin was travelling in a Innova Car bearing Registration No.TN-74-V-8073 from Kootapuzhi to Kovalam on 27.06.2014 at about 2.45 p.m. When the Car reached the branch road on the left side of Uvari – Anjugramam Main Road, a Bus bearing Registration No.TN-74-N 1366 belonging to the first respondent / Transport Corporation came from the opposite direction in a rash and negligent manner and hit the Car. As a result, the deceased succumbed to injury and a case has also been registered in Crime No.181/2014 as against the



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driver of the bus on the file of the Pazhavur Police Station. Hence, the claimants have filed the claim petition.

4. Before the Tribunal, it is the stand of the respondents that Car was driven by its driver in a rash and negligent manner, crossed the centre portion of the road without giving any horn and tried to overtake the vehicle proceeding in front of the Car and dashed against the bus.

5. On the side of the claimants, 3 witnesses were examined as P.W.1 to P.W.3 and 19 documents were marked as Ex.P1 to P19. This Court, by order dated, 06.04.2023 (i.e., today) have marked the two documents viz., a certificate issued by the Government of India regarding the Registration of a Fishing Boat having Registration No.IND-TN-14-MO-285, dated 03.01.2013 and the Fisherman Identity card of the deceased issued by the Government of Tamil Nadu bearing ID No.KOV:6262, as Ex.P20 and Ex.P21. On the side of the respondents, one witness was examined as R.W.1 and no documentary evidence was marked.

6. The Tribunal, after analyzing the entire evidence and materials, has found that since the Car was proceeded in a high speed, the driver of the Car could



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not control the movement of the vehicle. Similarly, bus also came with high speed in the opposite direction and therefore, both the driver of the vehicles are equally responsible for causing accident and awarded a sum of Rs.3,12,000/- as compensation. The petitioners, without challenging the contributory negligence fixed by the Tribunal, have filed this Appeal only challenging the quantum fixed by the Tribunal.

7. It is the contention of the learned counsel appearing for the petitioners / appellants that the deceased is a Fisherman by profession and to substantiate the same, he has also filed additional documents to show that he is the owner of the fishing boat. However, the Tribunal fixed the monthly income of the deceased as Rs.6,000/- per month, which is very low and therefore, the same has to be enhanced. Further, it is the contention of the learned counsel appearing for the petitioners / appellants that the Tribunal has not added 10% towards future prospects applicable to the age group between 50 to 60, as per the judgment of the Hon'ble Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi and others* reported in **2017 16 SCC 680**. Therefore, the award passed by the Tribunal warrants interference.



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8. This Court heard the learned counsel appearing on either side and perused the materials available on record.

9. Considering the additional documents filed by the petitioners, this Court is of the view that the notional income fixed by the Tribunal at Rs.6,000/- is very low in an accident took place in the year 2014 and the deceased was a Fisherman by profession and he has also owned a fishing boat. Therefore, even applying the minimum wages, the deceased would have earned a sum of Rs.12,000/- p.m., at the relevant point of time. Accordingly, this Court fixed the notional income of the deceased as Rs.12,000/- per month. As per the judgment of the Hon'ble Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi and others* reported in **2017 16 SCC 680**, this Court added 10% towards future prospects, then the monthly income would be Rs.13,200/- (12,000 + 1,200). If $\frac{1}{4}$ is deducted towards personal expenses, the monthly income would be Rs.9,900/- (13,200 - 3300). Therefore, the annual income would be Rs.1,18,800/- (9,900 X 12). If multiplier '11' is applied, the loss of dependency would be Rs.13,06,800/- (1,18,800 X 11).



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10. Further, the Tribunal has awarded a sum of Rs.10,000/- towards loss of consortium, which is very low and therefore, this Court is inclined to award a sum of Rs.1,60,000/- towards loss of consortium. The Tribunal has awarded a sum of Rs.10,000/- towards loss of love and affection, which is very low. Accordingly, this Court is inclined to award a sum of Rs.40,000/- each to the petitioners 2 to 4 and therefore, the loss of love and affection would be Rs.1,20,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses, which is very low and therefore, a sum of Rs.15,000/- is awarded towards funeral expenses. Further, this Court awards a sum of Rs.15,000/- towards loss of estate. The modified compensation are as follows:

S.No	Heads	Amount
1.	Loss of income / dependency	Rs.13,06,800/-
2.	Loss of Consortium	Rs. 1,60,000/-
3.	Loss of Love and affection (Rs.40,000/- each to petitioners 2 to 4)	Rs. 1,20,000/-
4.	Funeral	Rs. 15,000/-
5.	Loss of Estate	Rs. 15,000/-
	Total	Rs.16,16,800/-

The modified compensation is Rs.16,16,800/-. Out of the modified amount, if 50% of the amount is deducted towards contributory negligence, the compensation



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comes to Rs.8,08,400/-. Accordingly, the petitioners are entitled to get a compensation of Rs.8,08,400/- with interest at the rate of 7.5% p.a.

11. In the result, this Civil Miscellaneous Appeal is allowed and the petitioners 1 to 4 / appellants 1 to 4 are entitled to get a sum of Rs.8,08,400/ (Rupees Eight Lakhs Eight Thousand and Four Hundred only) as compensation. Out of the said amount, the first petitioner / first appellant, who is the wife of the deceased is entitled to get a sum of Rs.3,08,400/- and the petitioners 2 to 4, who are children of the deceased are entitled to get a sum of Rs.1,00,000/- each. The respondents 2 and 3, who are the parents of the deceased are entitled to get a sum of Rs.1,00,000/- each.

12. The first respondent / Transport Corporation is directed to deposit the modified compensation of Rs.8,08,400/ (Rupees Eight Lakhs Eight Thousand and Four Hundred only) with accrued interest at the rate of 7.5% from the date of petition till the date of deposit and costs within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount if any already deposited. The petitioners 1 to 3 may approach the Tribunal for withdrawal of the said amount, for filing necessary application and if such an application is filed, the



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Tribunal shall pass orders for withdrawal. Insofar as the shares of the minor / 4th petitioner is concerned, the Tribunal is directed to deposit the same in a Fixed Deposit under renewable scheme periodically, till he attains majority and the first petitioner, the Guardian of the minor, is permitted to withdraw the interest accrued thereon once in three months for the welfare of the minor. No Costs.

06.04.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

vsm

To

- 1.The Motor Accident Claims Tribunal, (IV Additional District Judge),
Tirunelveli.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

vsm

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