



C.M.A.(MD)No.286 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.04.2023

CORAM:

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

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The Oriental Insurance Company Limited,  
Through its Branch Manager,  
Door No.5, G.H.Road,  
Theni

...Appellant/2<sup>nd</sup> Respondent

Vs.

1.Pattinathar (died)

Late Sulaikammal (died)

2.Uthuman Oli

3.Seiathu Rabeeya

4.Rabeeka Banu

5.G.Anbarasi

...Respondents 1-5/Petitioners 1 to 5

...6<sup>th</sup> Respondent/1<sup>st</sup> Respondent

**PRAYER:** This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree in M.C.O.P.No.109 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Periakulam dated 18.10.2012.

For Appellant : Mr.R.Meenakumari

For R2 to R4 : Mr.Anand Chandrasekar

For R5 : Mr.J.Barathan



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## **JUDGMENT**

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This Civil Miscellaneous Appeal is filed challenging the award passed by the Motor Accident Claims Tribunal/Subordinate Court, Periyakulam in M.C.O.P.No.109 of 2009, dated 18.10.2012.

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

3.The brief facts, leading to the filing of the claim petition, are as follows:-

(i)on 04.04.2009 at about 08.00 a.m., the deceased was travelling in an auto bearing Registration No.TN-60-D-3783. The driver had driven the auto in a rash and negligent manner and dashed against the bridge, as a result, the deceased succumbed to injuries.

(ii)the first petitioner is the father of the deceased. The second petitioner is the mother of the deceased and she died. The third and fourth petitioners are the brothers and fifth petitioner is the sister of the deceased. The deceased was aged about 24 years at the relevant point of time. He was also earning a sum of



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Rs.5,000/- per month as a Vegetable Commission Agent. Hence, the claim petition was filed seeking compensation.

(iii) the second respondent/Insurance company before the Tribunal took a stand that the auto driver did not have any valid license and the vehicle also did not have valid permit at the relevant point of time. Further, the deceased was travelled in the auto as an unauthorized passenger.

3.Before the tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P4 were marked. On the side of the respondents R.W.1 to R.W.4 were examined and Ex.R1 to Ex.R8 were marked.

4.The tribunal after considering the entire oral and documentary evidence on record fixed the negligence on the part of the first respondent and awarded the compensation of Rs.6,48,000/-. Challenging the same, the present appeal had been filed by the Insurance Company.

5.Though the present appeal had been filed challenging the liability and quantum of compensation awarded by the Tribunal, the learned counsel for the



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appellant fairly submitted that they are not pressing the appeal on the ground of liability and they are challenging only the quantum fixed by the Tribunal.

6.The learned counsel for the appellant submitted that the Tribunal instead of deducting 50% of the income, had deducted only 1/3 of the income towards his personal expenses and the same is not in accordance with law.

7.The learned counsel for the respondents 1 to 5 would submit that the deceased was aged about 24 years at the time of accident, but the Tribunal had fixed only Rs.3,000/- as his notional income. The accident was occurred in the year 2009. The tribunal after analyzing the evidence on record had awarded the compensation and the same does not warrant any interference.

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

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



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***Whether the Tribunal is right in fixing the quantum by deducting 1/3 of the income?***

10. Admittedly, the deceased was a bachelor. The accident took place in the year 2009. The Tribunal had only fixed a sum of Rs.3,000/- as the monthly income of the deceased. This Court is of the view that the income fixed by the Tribunal is very low. Even a person working as Coolie could have earned a sum of Rs.5,000/- per month. Hence, the Tribunal ought to have fixed a sum of Rs.5,000/- as the monthly income of the deceased to award a reasonable compensation.

11. Accordingly, this Court fixes the monthly notional income of the deceased at Rs.5,000/- (Rupees Five Thousand only). If 40% of future prospects is added 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], the monthly income of the deceased would come around Rs.7,000/- (Rupees Seven Thousand only). Since the deceased is a bachelor, 50% of his income has to be deducted towards his personal expenses. Hence, the monthly income of the deceased is fixed at Rs.3,500/- (Rupees Three Thousand Five



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Hundred only) and considering the age of the deceased at the relevant point of time, multiplier 17 is added. Hence, the compensation under the head loss of dependency would come around Rs.7,14,000/- (Rupees Seven Lakhs Fourteen Thousand only). Further, the Tribunal had not awarded any amount towards conventional damages. Hence, this Court awards a sum of Rs.15,000/- (Rupees Fifteen Thousand only) under the head of 'loss of estate' and Rs.15,000/- (Rupees Fifteen Thousand only) under the head of 'funeral expenses'. It is also stated that pending this appeal, the first petitioner, father of the deceased also died. Hence, the compensation under the head of love and affection is not awarded by this Court. In fine, the claimants are entitled to the compensation as stated below:

| S.No. | Head               | Amount        |
|-------|--------------------|---------------|
| 1.    | Loss of dependency | Rs.7,14,000/- |
| 2.    | Loss of estate     | Rs. 15,000/-  |
| 3.    | Funeral Expenses   | Rs. 15,000/-  |
|       | Total              | Rs.7,44,000/- |

12.In view of the above, the compensation awarded by the Tribunal is enhanced and this Civil Miscellaneous Appeal is dismissed.



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13.The Appellant Insurance Company is directed to deposit the enhanced compensation amount of Rs.7,44,000/- (Rupees Seven Lakhs Forty Four Thousand only) as modified by this Court with interest at the rate of 7.5% at the first instance to the credit of M.C.O.P.No.109 of 2009, on the file of the Motor Accident Claims Tribunal /Subordinate Court, Periyakulam within a period of six weeks from the date of receipt of a copy of this judgment, less the amount, if any already deposited and thereafter, the appellant / Insurance Company is entitled to recover the same from the fifth respondent. On such deposit, the claimants are permitted to withdraw a sum of Rs.2,48,000/- each (Rupees Two Lakhs Forty Eight Thousand only), less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs.

**12.04.2023**

NCC : Yes / No  
Index : Yes/No  
Internet : Yes/No  
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To

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



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**N.SATHISH KUMAR, J.**

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