



WEB COPY



CMA.No.2029 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2029 of 2024

- 1.Selvi
2. Ayyappan
3. Arul
4. Minor. Anandhi
5. Minor. Anand
6. Minor. Arunachalam
7. Subbu

.... Appellants

4th, 5th and 6th Minor appellants are represented by next friend and Natural Guardian their mother the 1st appellant Selvi.

vs.

1. Balasubramaniam

2. The Manager,
United India Insurance Company Limited,
No.46, Katpadi Road, Vellore

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 30.08.2019 in M.A.C.T.O.P.272 of 2017 on the file of the Special Subordinate Judge, Motor Accidents Claims Tribunal, Thiruvannamalai.

For Appellants : Ms.A. Subadra

R1 : Ex parte

For R2 : Mr.P. Sankaranarayanan



WEB COPY



CMA.No.2029 of 2024

JUDGMENT

The appellants are the claimants in M.A.C.T.O.P.272 of 2017 on the file of the Special Subordinate Judge, Motor Accidents Claims Tribunal, Thiruvannamalai. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.50,00,000/- for the death of one Munusamy (husband of the first claimant, father of the claimants 2 to 6 and son of the claimant 7) in a road accident that took place on 08.02.2017.

2. The brief case of the appellants / claimants is as follows :

2.1. On 08.02.2017 Munusamy (deceased) was levelling the mud loaded in the lorry bearing Registration Number TN-31-AE-8068, belonging to the first respondent and the driver of the lorry, suddenly moved the lorry in a rash and negligent manner, as a result of which Munusamy came into contact with a High Tension wire and was electrocuted and died.



CMA.No.2029 of 2024

3. According to the claimants, the rash and negligent driving of the driver of the lorry bearing Registration Number TN-31-AE-8068, was the cause of the accident and that since the said vehicle was insured with the second respondent, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. In the Tribunal the owner of the lorry remained absent and was set *ex parte*. The second respondent insurance company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal after analysing the evidence on record fastened negligence on the part of the driver of the lorry bearing Registration Number TN-31-AE-8068. Since the driver of the lorry was not having a valid driving license on the date of accident, the Tribunal directed the second respondent Insurance Company to pay compensation of Rs.11,62,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, in the first



CMA.No.2029 of 2024

instance, and then recover the same from the first respondent, the owner of the lorry, vide its orders dated 30.08.2019.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mrs. A. Subadra, learned counsel appearing for the appellants and Mr. P. Sankaranarayanan, learned counsel for the second respondent.

8. Mrs.A. Subadra, learned counsel appearing for the appellants contended that Munusamy (deceased) was a daily labourer earning a sum of Rs.20,000/- per month. However, the Tribunal had fixed the notional monthly income of the deceased only as Rs.6,500/-, which is on the lower side. She therefore, prayed for enhancement of the monthly income of the deceased.



9. Per contra, Mr. P. Sankaranarayanan, learned counsel appearing for the second respondent/Insurance Company contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed.

10. The accident took place in the year 2017 and the deceased was aged 45 years on the date of accident. In the circumstances, fixing the notional monthly income of the deceased as Rs.15,000/- would be proper as far as the present case is concerned. As per the decision of the Supreme Court of India in *National Insurance Co. vs Pranay sethi and others* reported in **2017 (2) TNMAC 601**, 25% is added towards future prospects of the deceased. Since the deceased had seven dependents, 1/5 should be deducted towards his personal expenses. The deceased was aged 45 years on the date of the accident and the proper multiplier to be adopted in the instant case is 14 as per the decision rendered in *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in **(2009) 6 SCC 121**.



CMA.No.2029 of 2024

Calculation

WEB COPY

Notional Income = Rs.15,000/-

25% Future Prospects = Rs.18,750/-

After 1/5 deduction = Rs.15,000/-

Loss of dependency

= Rs.15,000/- x 12 x 14

= Rs.25,20,000/-

In addition to that the claimants are entitled to Rs.2,80,000/- (40,000 x 7), Rs.15,000/- and Rs.15,000/- for Loss of Consortium, Loss of Estate and Funeral Expenses respectively as per the decision in *National Insurance Co. vs Pranay sethi and others* (cited supra).

10.1. The enhanced amount under the different heads are detailed hereunder:

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court (Rs.)</i>
1.	Loss of dependency	25,20,000/-
2.	Loss of consortium (Rs.40,000/- x 7)	2,80,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	28,30,000/-



CMA.No.2029 of 2024

WEB COPY

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.11,62,000/- to Rs.28,30,000/-.
- iii. The appellants / claimants are directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.
- iv. The second respondent, the United India Insurance Company Limited, Vellore, is directed to deposit the enhanced compensation amount i.e., Rs.28,30,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, in the first instance, to the credit of M.A.C.T.O.P. 272 of 2017 on the file of the Special



CMA.No.2029 of 2024

WEB COPY

Subordinate Court, Motor Accidents Claims Tribunal, Thiruvannamalai, within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the lorry under the same cause of action.

- v. The appellants/claimants are not entitled to claim any interest for the period of delay of 750 days in filing this appeal, as per the orders of this Court dated 09.07.2024 in C.M.P. No.10412 of 2024.
- vi. The enhanced compensation amount of Rs.28,30,000/-, is apportioned to the claimants as below:

(a) Rs.8,30,000/- with costs and interest to the first claimant (Selvi), wife of the deceased.

(b) Rs.3,50,000/- to the second claimant (Ayyappan), son of the deceased.

(c) Rs.3,50,000/- to the third claimant (Arul), son of the deceased.

(d) Rs.3,00,000/- each to the claimants 4, 5 and 6 (Minor. Anandhi, Minor.Anand and Minor.Arunachalam). Since they are minors, their share of compensation amount is ordered to be deposited in any one of the nationalized bank in India



CMA.No.2029 of 2024

until they attain the age of majority.

(e) Rs.4,00,000/- to the seventh claimant (Subbu), mother of the deceased.

vii. On such deposit being made, the appellants 1,2,3 and 7 are at liberty to withdraw their share as per the apportionment made by this Court, with costs and interest, after filing a proper petition for withdrawal.

30.08.2024

Index : Yes/No
Speaking/Non-speaking order
bga

To

1. The Special Subordinate Judge, Motor Accidents Claims Tribunal, Thiruvannamalai.
2. The Manager,
United India Insurance Company Limited,
No.46, Katpadi Road, Vellore.
3. The Section Officer, VR Section, Madras High Court, Chennai.



WEB COPY



CMA.No.2029 of 2024

R.HEMALATHA, J.

bga

C.M.A.No.2029 of 2024

30.08.2024