



WEB COPY



CMA.No.939 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.939 of 2023

Nandini

... Appellant

vs.

1. M/s Poppys Art,
S.F.No.261, Karaiousur Village,
Kuppandampalayam,
Veerapandi Post, Tiruppur

2.M/s United India Insurance Company Limited
No.139, C.G. Complex, Kumaran Road,
Tiruppur

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to modify the decree and judgment dated 01.08.2022 passed in M.C.O.P.No.1268 of 2019 on the file of Presiding Officer, Exclusive Motor Accident Claims Tribunal at Tiruppur

For Appellant : Mr.K. Myilsamy

For Respondent-1 : No appearance

For Respondent-2 : M/s.R. Sree Vidhya



CMA.No.939 of 2023

J U D G M E N T

WEB COPY

The appellant is the claimant in M.C.O.P.No.1268 of 2019 on the file of the Motor Accident Claims Tribunal at Tiruppur and she filed the said claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.50,00,000/- for the death of her husband/Sundaravadivelu, in a road accident that took place on 29.05.2019.

2.The brief case of the appellant / claimant is as follows :

On 29.05.2019, Sundaravadivelu (deceased) was riding his two wheeler bearing Registration No.TN-39-CY-4003 on Coimbatore-Erode road. When he was nearing Mahalakshmi Fancy stores on the same road, an Eicher Van bearing Registration No.TN-39-AC-4466 belonging to the first respondent and insured with the second respondent/United India Insurance Company Limited hit the two wheeler, as a result of which Sundaravadivelu fell down and sustained injuries. He was rushed to Government Hospital, Avinashi, but succumbed to injuries on the same day.



CMA.No.939 of 2023

3. According to the appellant, the rash and negligent driving of the driver of the Eicher van bearing Registration No. TN-39-AC-4466 was the cause for the accident and since the said vehicle was insured with the second respondent/The United India Insurance Company Limited, the owner of the vehicle/first respondent and the insurer of the Eicher van are jointly and severally liable to pay compensation.

4. The first respondent remained absent before the Tribunal and therefore, was set *ex parte*. The second respondent contested the 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 awarded a compensation of Rs.2,02,648/- to the present appellant together with interest at the rate of 7.5% per annum from the date of petition till the date of realization. Aggrieved over the quantum of compensation awarded by the Tribunal, the present appeal has been filed by the wife of the deceased.

6. Heard Mr. K. Myilsamy, learned counsel appearing for the



CMA.No.939 of 2023

appellant and Mrs.Sree Vidhya, learned counsel appearing for the second respondent.

7. Mr.K. Myilsamy, learned counsel for the appellant contended that the deceased was receiving a monthly pension of Rs.3,076/- and was also working as a agricultural labourer and also took up part time job in Co-operative Society from where he retired from the services. According to him, the deceased was earning a sum of Rs. 25,000/-per month. But, the Tribunal without taking this aspect into consideration, had fixed the income of the deceased only based on the pension amount which is Rs.3,076/- per month.

8.*Per Contra*, the learned counsel for the second respondent/Insurance Company contended that the Trial Court had rightly fixed the income of the deceased at Rs.3,076/- which is the actual pension amount and therefore, there is no reason to interfere with the quantum of compensation awarded by the Tribunal.

9. In the claim petition, the present appellant/claimant had



CMA.No.939 of 2023

mentioned that the deceased was a labourer and also took up a part time job in the Co-operative society from where he retired on attaining superannuation. According to the claimant her husband was earning a sum of Rs.25,000/- per month. It is true that no evidence was adduced by the appellant to substantiate her contention in this regard. However, it is seen from the records that the age of the deceased on the date of the accident is 59 years as is evidenced from the Post Mortem certificate and Aadhar Card. Therefore, he would have definitely taken up a job post retirement. It is quite common that retired officials take up sundry work and assist their ex-colleagues in the same office. They are also duly compensated. Apart from that he was working as an agricultural labourer. In the facts and circumstances of the case, this Court is of the opinion that fixing a sum of Rs.9,000/- as monthly income of the deceased would meet the ends of justice. The deceased was aged 59 years on the date of the accident and therefore, he is entitled to get future prospects at the rate of 10% as per the decision in *National Insurance Co. vs Pranay sethi and others* reported in **2017 (2) TNMAC 601**. Hence, the monthly income of the deceased is fixed at Rs.9,900/-(Rs.9,000+Rs.900). Since the appellant is the only legal heir of the deceased, 50% should be deducted towards



CMA.No.939 of 2023

personal expenses of the deceased. The age of the victim was 59 years on the date of the accident and therefore, the proper multiplier to be adopted in the instant case is '9' as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in (2009) 6 SCC 121.

Calculation :

Monthly income of the deceased = Rs.9,900/-

Annual Loss of income:

= Rs.9,900/- x 12 x 9

= Rs.10,69,200/-

After 1/2 deduction towards personal expenses

=Rs.5,34,600/-

In addition to that, as per the decision rendered by the Constitution Bench of the Honourable Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in 2017 (2) TNMAC 601, the claimant is entitled to Rs.40,000/-, Rs.15,000 and Rs.15,000/- towards Loss of Consortium, Funeral Expenses and Loss of Estate respectively. Thus, the claimant is entitled to a total compensation of Rs.6,04,600/- as



CMA.No.939 of 2023

furnished below in the tabular column.

WEB COPY

<i>S.No.</i>	<i>Head</i>	<i>Amount granted by this court</i>
1.	Loss of Income	Rs.5,34,600 /-
2.	Loss of consortium	Rs.40,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.6,04,600 /- rounded off to Rs.6,05,000/-

10. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,02,648/- to Rs.6,05,000/- which would carry interest at the rate of 7.5% per annum.

11. In the result,

(i) The Civil Miscellaneous Appeal is allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.2,02,648/- to Rs.6,05,000/-

(iii) The appellant / claimant is 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 / United India Insurance Company



CMA.No.939 of 2023

Limited is directed to deposit the enhanced compensation amount i.e.,

Rs.6,05,000/- (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 within a period of six weeks from the date of receipt of a copy of this order to the credit of M.C.O.P.No.12698 of 2019 on the file of the Exclusive Motor Accident Claims Tribunal at Tiruppur.

(v) On such deposit being made, the appellant/claimant is at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law.

07.08.2024

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



CMA.No.939 of 2023

To

WEB COPY

1. The Motor Accident Claims Tribunal at Tiruppur.
2. The United India Insurance Company Limited
No.139, C.G. Complex, Kumaran Road,
Tiruppur
3. The Section Officer, VR Section, Madras High Court, Chennai.

R.HEMALATHA, J.



WEB COPY



CMA.No.939 of 2023

smn

C.M.A.No.939 of 2023

07.08.2024