



C.M.A.No.1346 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.1346 of 2022

1. Divya
W/o.Late Santhakumar
2. Minor.Bharanidharan
S/o.Late Santhakumar
3. Minor.Iniyan
S/o.Late Santhakumar
4. Maariyammal

... Appellants

Vs.

1. Vasudevan
2. M/s.Cholamandalam MG General Insurance Co.Ltd.,
No.9, 1st Floor, Rajaji Road,
Peramanoor, Near Bus Stand, Salem.

... Respondents

Prayer: The Civil Miscellaneous Appeal is filed under Section 166 of Motor Vehicles Act,1988, challenging the judgment and decree dated 04.04.2022 made in M.C.O.P.No.415 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.



WEB COPY



C.M.A.No.1346 of 2022

For Appellants : Ms.L.Manisha
for Mr.S.P.Yuvaraj

For Respondent
No.1 : Mr.G.Arun Sekaran

For Respondent : Ms.R.Sreevidhya
No.2

- - - - -

JUDGMENT

*(Judgment of the Court was delivered by **J. Nisha Banu, J**)*

The Civil Miscellaneous Appeal has been filed to enhance the compensation amount made in judgment and decree dated 04.04.2022 made in M.C.O.P.No.415 of 2020 on the file of the Motor Accident Claims Tribunal Special District Judge, Salem.

2. On 09.10.2019 at 5.00 a.m., when the deceased Santhakumar was riding his two wheeler bearing registration No.TN-34-R-3783 in Covai-Salem bypass road at Sankari Mettukadai near Sri Balaji Punjabi Dabha from Sankari, the Mini truck bearing registration No.TN-15-S-6228 was driven by its driver in a rash and negligent manner in the same direction and hit behind the two wheeler, due to which, the said Santhakumar died on the spot.

3. It was a case of the claimants that the deceased Santhakumar was



C.M.A.No.1346 of 2022

aged 27 years at the time of accident and was working as Power Loom Weaver

and he was also a priest in a temple and earning a sum of Rs.30,000/- per month. The claimants/legal representatives of the deceased have filed a claim petition before the Motor Accident Claims Tribunal claiming a sum of Rs.40,00,000/- as compensation. . The claim was disputed by the 2nd respondent/Insurance company.

4. The Tribunal based on the witnesses and on the documents produced by both sides has fastened the liability on the part of the first respondent herein/owner of the vehicle, whose vehicle was insured with the 2nd respondent herein/insurer. The Tribunal has ultimately quantified the compensation at Rs.13,69,000/-. Being dissatisfied with the quantum arrived at by the Tribunal, the claimants/appellants are before this Court in this Civil Miscellaneous Appeal.

5. Heard the learned counsel for the appellants as well as the respondents.

6. The dispute is only with regard to the quantum arrived by the Tribunal. The learned counsel for the appellants submitted that the deceased was 27 years old at the time of accident and was working as a power loom weaver and was earning Rs.30,000/- per month and he was also a priest in a temple, but the Tribunal has taken the monthly salary of the deceased as



C.M.A.No.1346 of 2022

Rs.8,000/- only including future prospects. He would further state that the Tribunal has not taken 40% future prospectus as per the Sarala Verma's case reported in 2009(2) TANMAC 1. Learned counsel would further state that the amount awarded under the head of love and affection to the appellants is also very low and further, no amount was awarded for loss of estate. Therefore, he would pray to enhance the compensation amount awarded by the Tribunal.

7. The learned counsel for the second respondent/Insurance Company submitted that no proof was produced for the income of the deceased Santhakumar. He further submitted that the Tribunal has considered the materials and evidence on record in a proper perspective and has awarded the compensation, which is just, fair and reasonable and hence, the same does not require interference in the hands of this Court.

8. As far as quantum of compensation is concerned, it is seen from the materials available on record that the deceased was 27 years at the time of accident. Though it was averred by the claimants that the deceased worked as a power loom weaver and a priest in a temple, there was no proof marked before the Tribunal for the same. However, the Tribunal has taken a sum of Rs.8,000/- per month as notional income, which in our opinion is meagre and the same needs to be enhanced. Even if minimum amount of salary is fixed, a sum of Rs.13,000/- can be taken as a monthly salary. The wife, two minor children



C.M.A.No.1346 of 2022

and the mother are the dependents of the deceased. Taking into consideration,

the age of the deceased, the dependents of the deceased, the year of the accident and the income of the deceased, We are of the opinion that fixing the income of the deceased as Rs.13,000/- and adding 40% future prospects would be fair and proper. Hence, a sum of Rs.13,000/- per month is fixed as notional income of the deceased. Adding 40% for future prospects, the income of the deceased is fixed at Rs.18,200/- per month. Since there are 4 dependents, deducting $\frac{1}{4}$ th of the amount, it comes to Rs.13650/-. The age of the deceased is 27 years at the time of accident. Therefore, as per the ratio laid down by the Hon'ble Supreme Court in *Sarala Verma and others vs. Delhi Transport Corporation and another* (2009) 6 SCC 121), applying the multiplier of 17, a sum of Rs.27,84,600/- (Rs.13650x12x17) is awarded for loss of income of the deceased.

9. As far as the amount awarded under the head of loss of love and affection is concerned, We are of the opinion that a sum of Rs.80,000/- awarded by the Tribunal is less amount. Therefore, We fix a sum of Rs.1,60,000/- i.e., Rs.40,000/- for each claimants towards loss of love and affection. The Tribunal has not awarded any amount for loss of estate. Therefore, We fix a sum of Rs.15,000/- towards loss of estate. Since sufficient amount is granted for loss of love and affection, no amount is granted under



C.M.A.No.1346 of 2022

the head, loss of consortium. We find that the funeral expenses awarded by the

Tribunal is on the higher side i.e, Rs.25,000/-. Therefore, We fix a sum of

Rs.15,000/- towards funeral expenses. Thus, the compensation awarded by the

Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of income	6000x12x17 =12,24,000	13650x12x17 =27,84,600	Enhanced
2.	Loss of consortium	40000	Nil	reduced
3.	Funeral expenses	25,000	15,000	reduced
4.	Loss of love and affection	80000	1,60,000	enhanced
5.	Loss of estate	Nil	15,000	Granted
	Total	13,69,000/-	29,74,600	Enhanced by Rs.16,05,600/- [Rs.29,74,600/- - Rs.13,69,000]

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.13,69,000/- is hereby enhanced to Rs.29,74,600/- together with interest at the rate of 7.5% per annum from the



C.M.A.No.1346 of 2022

date of petition till the date of deposit. The 1st appellant/wife is entitled to Rs.15,74,600/-. The appellants 2 & 3 are entitled to Rs.5,00,000/- each and the 4th appellant is entitled to Rs.4,00,000/-. The appellants are directed to pay the necessary Court fee if any, on the enhanced award amount. The respondents are jointly and severally directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st & 4th appellants are permitted to withdraw the proportionate share amount awarded by this Court along with interest and costs, less the amount if any, already withdrawn. Since the 2nd and 3rd appellants are minors, their proportionate share amount shall be invested in anyone of the Nationalized Bank until they attain majority and the 1st appellant being their mother and natural guardian is permitted to withdraw the interest accrued on the share of the minor appellants once in three months for the maintenance and welfare of the minors. No costs.

(J.N.B., J.) (R.S.V., J.)
04.11.2024

vsi

To
The Motor Accident Claims Tribunal,
Special District Judge, Salem.



WEB COPY



C.M.A.No.1346 of 2022

J. NISHA BANU, J.
and
R.SAKTHIVEL, J.

vsi

C.M.A.No.1346 of 2022

04.11.2024