



C.M.A.No.36 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 29.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.36 of 2022

1.Babu
2.S.Raja
3.R. Valli

... Appellants

Vs.

1.Umamaheswari
2.M/s. The New India Assurance Company Limited,
B.O.720703, at 99/C-3, I Floor,
Opp to New Bus Stand,
Perambalur by its Branch Manager.

3.V.Anjukarajan

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree dated 15.03.2021 made in M.C.O.P.No.246 of 2015 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

For Appellants	:	Mr.Sowriraja For Mr.C.Vidhusan
For R1	:	Exparte
For R2	:	M/s.K.Gomathi For M/s.S.R.Sumathy
For R3	:	Dispensed with



C.M.A.No.36 of 2022

JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimants for seeking enhancement of compensation, challenging the Award, dated 15.03.2021 passed in M.C.O.P.No.246 of 2015, on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The first claimant is the husband and the second and third claimants are the parents of one Divya, who died in the road accident taken place on 23.08.2014 at about 8.30 p.m., on Thittakudi to Pennadam Main Road, Near Saravana Maligai of Vathistapuram. The claimants originally filed claim petition claiming compensation for a sum of Rs.25,00,000/- by invoking under section 166 of the Motor Vehicles Act against all the respondents.

4. According to them, the driver of the first respondent has driven the offending passenger Auto, which was insured with the second



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respondent, in a rash and negligent manner hit on the goods vehicle belongs to the third respondent, which resulted in causing death of deceased and the respondents are liable to compensate the claimants.

5. The owners of both the vehicles have not contested the claim and were remained ex-parte. The second respondent, who is the insurer of the auto in which, the deceased was travelling has contested the claim on the ground that the driver of the third respondent goods vehicle negligently drove the vehicle and caused the accident. Hence, the third respondent alone is responsible for causing the accident.

6. After recording the evidence of both sides, the Tribunal in point Nos.1 and 2 has held that the driver of the third respondent vehicle negligently drove the goods vehicle, which resulted in causing the death of the deceased, thereby, the third respondent was directed to pay the compensation quantified by the Tribunal.

7. The Tribunal by fixing the notional income after considering the future prospects, quantified the compensation as Rs.11,78,000/- and further



C.M.A.No.36 of 2022

WEB COPY

ordered that the first petitioner - husband is entitled to a sum of Rs.6,78,000/- and the second and third petitioners are entitled to a sum of Rs.2,50,000/- each.

8. Aggrieved over the quantum of compensation, this Appeal has been filed by the claimants and they have not challenged the finding of negligence fixed by the Tribunal.

9. The learned counsel for the appellants/claimants submitted that the notional income fixed by the Tribunal is on the lower side and further the Tribunal has not awarded any amount towards loss of consortium to the parents of the deceased. Hence, prays to enhance the compensation.

10. I have also heard the counsel for the Insurance Company, who has stated that, there is no finding against them and they are added as formal party.

11. The first and third respondents have not appeared in this Appeal inspite of service of notice.

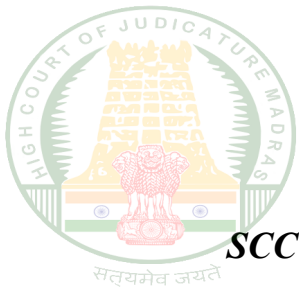


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12. I have considered the rival submissions made on both sides and also perused the records.

13. The deceased in this case was aged about 19 years at the time of accident and was also 7 months pregnant lady. Taking note of the same, the Tribunal has fixed the notional income of the deceased at Rs.5,000/- per month, considering the year of accident. This Court has consistently followed the norms for awarding compensation of Rs.12,000/- per month for the accident taken place, during the financial year of 2014 - 2015, for the casual labourers, daily wages or the person who are not established their income, etc. Accordingly, the income of the deceased is fixed as Rs.12,000/- per month.

14. Considering the age of the deceased, the Tribunal has rightly fixed 40% towards future prospects as per the Apex Court Judgment in *National Insurance Co. Ltd., vs. Pranay Sethi and other (2017(2) TN MAC 609 (SC): 2017 (16) SCC 680)* and this Court is inclined to confirm the same. As per the Apex Court Judgment in *Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6)*



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SCC 121], the Tribunal has rightly applied multiplier as '18' by considering the age of the deceased at the time of the accident. Considering the number of claimants, the Tribunal has rightly deducted 1/3rd towards her personal expenses. The Tribunal has also awarded an additional sum of Rs.1,00,000/- for the death of the fetus and this Court is of the view, the same needs enhancement. Accordingly, this Court is inclined to enhance the sum of Rs.1,50,000/-. The second and third appellants, who are the parents of the deceased have not awarded any compensation under the head filial consortium. As per the Apex Court Judgment in ***Magma General Insurance Co. Ltd., vs. Nanu Ram and Others [2018 (18 SCC 130 : MANU/SC/1012/2018]*** and ***United India Insurance Co., Limited vs. Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11 SCC 780]*** the parents, who are the dependents of the deceased are entitled to claim compensation towards loss of filial consortium. Accordingly, this Court is inclined to award a sum of Rs.40,000/- each towards Filial Consortium to the second and third appellants.

15. Considering the relationship between the parties and also the fact that the deceased was married the first appellant just one year prior to the



occurrence, the compensation shall be apportioned equally among all the three claimants. Accordingly, the following calculations have been made to calculate the loss of income for the deceased: $[12,000 + 4800 (40\% \text{ of } 12000) \times 12 \times 18 \times 1/3 = \text{Rs.}12,09,600/-]$. As far as the other conventional heads such as Funeral Expenses and Loss of Estate are concerned, the same are reasonable and the same are hereby confirmed.

16. Accordingly, the Award passed by the Tribunal under various heads are hereby modified as follows:

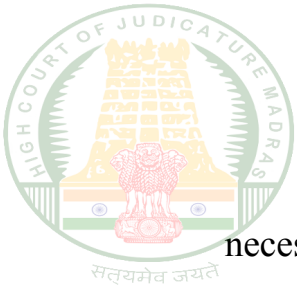
S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	Rs.10,08,000/-	Rs.12,09,600/-	Enhanced
2.	Loss of Consortium	Rs.40,000/-	Rs.1,20,000/-	Modified
3.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5	For the death of Foetus	Rs.1,00,000/-	Rs.1,50,000/-	Enhanced
	Total Compensation	Rs.11,78,000/-	Rs.15,09,600/-	Enhanced by Rs.3,31,600/-



C.M.A.No.36 of 2022

WEB COPY

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,78,600/- is hereby enhanced to Rs.15,09,600/- [Rupees Fifteen Lakhs Nine Thousand and Six Hundred only] along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The Insurance Company is directed to deposit the amount now awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.246 of 2015, on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, equally amount themselves. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. The Insurance Company is permitted to withdraw the amount, if any, lying in the credit of M.C.O.P.No.246 of 2015, on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay



C.M.A.No.36 of 2022

necessary court fee if any on the enhanced compensation. There shall be no order as to costs in the present appeal.

29.11.2024

ssi
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Perambalur.



C.M.A.No.36 of 2022

2. The Section Officer,
V.R.Section,
High Court,
Chennai.

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K. RAJASEKAR, J.

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C.M.A.No.36 of 2022

C.M.A.No.36 of 2022

29.11.2024