



C.M.A.No.3419 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3419 of 2024

- 1.V.Valli
- 2.Minor Narendran
Minor Premkumar (Died)
Guna (Died)
(Minor petitioner rep. by mother,
guardian, NF V.Valli)

(Cause title accepted vide Court order dated 28/10/24
made in CMP24090/2024 in
CMA SR 127791/2024 by RHJ)

... Appellants

Vs.

- 1.G.Sumathi
- 2.ICICI Lombard General Insurance Company Limited,
Building No.142, 1st Floor,
ECR Main Road,
Near Latha Steel House,
Kottupalayam,
Puducherry 605 008.
- 3.C.Karunakaran
K.C.Karthikeyan (Died)
- 4.TATA AIG General Insurance Company Limited
2nd Floor, Samson Towers, Pantheon Road,
Egmore, Chennai – 600 008.

5.Vanaja

... Respondents



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Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation in M.C.O.P.No.2360 of 2015 dated 13.03.2024 on the file of the Motor Accidents Claims Tribunal / Special District Court II, Cuddalore.

For Appellants : Mrs.Ramya V.Rao

For Respondents : R1, R3 and R5 – NDW
Mr.D.Hari Krishnan for R2
Mr.J.Michael Visuvasam for R4

J U D G M E N T

This appeal has been filed by the appellants/ claimants challenging the judgment and decree passed in M.C.O.P.No.2360 of 2015 dated 13.03.2024 on the file of the Motor Accidents Claims Tribunal / Special District Court II, Cuddalore.

2.The learned counsel appearing for the appellants submitted that on 22.04.2015 at about 12.00 hours, the deceased Venkatesan was riding the motorcycle bearing Registration No.TN-22-BA-8238 from Arasur to go home near Arasur Cross Road. At that time, the



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driver of the Auto Rickshaw bearing Registration No.TN-15-8588 which

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came in the opposite direction, drove the vehicle in a rash and negligent manner and hit against the motorcycle and the deceased fell down. At that time, the Tractor bearing Registration No.TN.32.E.0365, which came behind the motorcycle in a rash and negligent manner, ran over the deceased, due to which, the deceased lost his life.

3.The learned counsel appearing for the appellants further submitted that thereafter, the dependants of the deceased Venkatesan/ appellants/ claimants filed claim petition before the Motor Accidents Claims Tribunal, claiming a sum of Rs.35 Lakhs as compensation. After adjudication, the Tribunal awarded a sum of Rs.17,87,800/- as compensation along with interest at the rate of 7.5% per annum from the date of petition till payment with costs and directed the respondents 2 and 4 to deposit the compensation. Aggrieved by the same, the claimants have preferred this appeal seeking enhancement in compensation.

4.The learned counsel appearing for the appellants further submitted that at the time of filing claim petition, there were four



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dependants of the deceased and subsequently one minor claimant

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passed away and after passing of the award by the Tribunal, another claimant/ mother of the deceased passed away and further submitted that the subsequent death will not deprive the rights of the claimants to claim compensation. The Tribunal ought to have deducted $\frac{1}{4}$ towards personal expenses, however, deducted $\frac{1}{3}$ towards personal expenses, which is not sustainable one. In support of his contention, the learned counsel relied upon the decision of the Hon'ble Apex Court reported in **(2021) 2 SCC 166 [Kirti and another Vs. Oriental Insurance Company Limited]**.

5.The learned counsel appearing for the appellants further submitted that the accident is of the year 2015, however, the Tribunal fixed the monthly income of the deceased at Rs.9,000/- which is very meagre and further submitted that the compensation awarded under the other heads are also very meagre. Hence the appellants are entitled for enhancement in compensation.

6.The learned counsel appearing for the respondents 2 and 4 respective Insurance Company submitted that the Tribunal after



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considering all the factual aspects, awarded compensation which is just

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and reasonable and hence, the impugned judgment warrants no interference.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respective Insurance Company and perused the materials available on record.

8.The accident and the manner in which the accident happened are not disputed. This appeal has been filed only questioning the quantum of compensation. Hence, there is no need for any discussion with regard to negligence aspect.

9.The tribunal after elaborately discussing the factual aspects awarded a sum of Rs.16,12,800/- for loss of income, Rs.44,000/- for loss of spousal consortium to 1st claimant, Rs.44,000/- for loss of parental consortium to 2nd claimant, Rs.44,000/- for loss of filial consortium to 4th claimant, Rs.33,000/- for funeral expenses and loss of estate, Rs.10,000/- for transport expenses and arrived at a total compensation of Rs.17,87,800/- with interest at the rate of 7.5% p.a.



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from the date of petition till payment.

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10.It is useful to extract hereunder the relevant portion of the decision of the Hon'ble Apex Court reported in **(2021) 2 SCC 166** **[Kirti and another Vs. Oriental Insurance Company Limited]:**

"Analysis

I. Deduction for personal expenses

9. *We have thoughtfully considered the rival submissions. It cannot be disputed that at the time of death, there in fact were four dependants of the deceased and not three. The subsequent death of the deceased's dependant mother ought not to be a reason for reduction of motor accident compensation. Claims and legal liabilities crystallise at the time of the accident itself, and changes post thereto ought not to ordinarily affect pending proceedings. Just like how the appellant claimants cannot rely upon subsequent increases in minimum wages, the respondent insurer too cannot seek benefit of the subsequent death of a dependant during the pendency of legal proceedings. Similarly, any concession in law made in this regard by either counsel would not bind the parties, as it is legally settled that advocates cannot throw away legal rights or*



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enter into arrangements contrary to law.”

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11.The decision cited supra makes it clear that the subsequent death will not deprive the rights of the claimants to claim compensation. The Tribunal while awarding compensation for loss of income ought to have deducted $\frac{1}{4}$ towards personal expenses, instead, deducted $\frac{1}{3}$ towards personal expenses, which is not sustainable one.

12.The accident is of the year 2015. Hence, this Court fix a sum of Rs.12,000/- as the monthly notional income of the deceased. The Tribunal has rightly awarded 40% future prospects and has rightly adopted the multiplier 16. If $\frac{1}{4}$ of the income is deducted for personal expenses, the amount awarded for loss of income works out to Rs.24,19,200/- [Rs.12,000/- X 40% = Rs.4,800/-; Rs.12,000/- + Rs.4,800/- = Rs.16,800/-; Rs.16,800/- X $\frac{1}{4}$ = Rs.4,200/-; Rs.16,800/- - Rs.4,200/- = Rs.12,600/-; Rs.12,600/- X 12 X 16 = Rs.24,19,200/-].

13.The amount awarded under the heads loss of spousal consortium to 1st claimant, loss of parental consortium to 2nd claimant, loss of filial consortium to 4th claimant, funeral expenses and loss of estate, in the opinion of this Court are high and this Court is inclined to



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reduce the amount awarded under the said heads. Accordingly, the amount awarded for loss of spousal consortium to 1st claimant is reduced to Rs.40,000/- from Rs.44,000/-, the amount awarded for loss of parental consortium to 2nd claimant is reduced to Rs.40,000/- from Rs.44,000/-, the amount awarded for loss of filial consortium to 4th claimant is reduced to Rs.40,000/- from Rs.44,000/-, the amount awarded for funeral expenses and loss of estate is reduced to Rs.30,000/- [Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate] from Rs.33,000/-. The amount awarded under the head transport expenses, in the opinion of this Court is just and reasonable and the same is confirmed.

14.Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of income	Rs.16,12,800/-	Rs.24,19,200/-
2.	Loss of spousal consortium to 1 st claimant	Rs. 44,000/-	Rs. 40,000/-
3.	Loss of parental consortium to 2 nd claimant	Rs. 44,000/-	Rs. 40,000/-
4.	Loss of filial consortium to 4 th claimant	Rs. 44,000/-	Rs. 40,000/-
5.	Funeral expenses and loss of estate	Rs. 33,000/-	Rs. 30,000/-



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S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
6.	Transport expenses	Rs. 10,000/-	Rs. 10,000/-
	Total	Rs.17,87,800/-	Rs.25,79,200/-

15.The appellants / claimants are entitled to total compensation of Rs.25,79,200/- along with interest at the rate of 7.5% p.a. from the date of petition till payment. The Tribunal had awarded 30% of the award amount to the mother of the deceased. Since the mother of the deceased namely, Guna passed away after passing of the award, the appellants/ claimants 1 and 2 are entitled to receive equal share in the said amount. Accordingly, the first appellant is entitled to receive 45% of the award amount and the second appellant is entitled to receive 55% of the award amount.

16.The civil miscellaneous appeal is partly allowed. The judgment and decree passed in M.C.O.P.No.2360 of 2015 dated 13.03.2024 on the file of the Motor Accidents Claims Tribunal / Special District Court II, Cuddalore, is modified to the above extent.

17.The respective Insurance Company/ respondents 2 and 4 are directed to deposit the modified/ enhanced award amount before the



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Tribunal within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first appellant/claimant is permitted to withdraw her share as apportioned by this Court, along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The second appellant is permitted to withdraw his share as apportioned by this Court, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal and on production of necessary proof with regard to his majority. If the second appellant is still minor, his share shall be kept in an interest yielding fixed deposit with anyone of the Nationalized Bank, initially, for a period of three years to be renewed at periodic intervals until he attain majority and the interest derived from out of the said share of the minor shall be paid to the first claimant/ mother every quarter to be utilized for the welfare of the said minor.

18.The appellants/ claimants shall not be entitled to any interest for the period of delay, if any, in filing/ representing the appeal. The appellants/ claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accidents



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Claims Tribunal / Special District Court II, Cuddalore, shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellants / claimants.

19.The civil miscellaneous appeal is partly allowed. No costs.

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal/
Special District Court II, Cuddalore.



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M.DHANDAPANI,J.
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