



C.M.A.No.924 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 05.01.2024**

CORAM :

**The Hon'ble Mr. Justice Krishnan Ramasamy**

**C.M.A.No.924 of 2023**

1. P.Chandramathi
2. Minor P.Guna
3. Minor P.Santhosh
4. Minor P.Ramya

Appellants/petitioners 2, 3 and 4 are represented  
by their mother who is their natural guardian

... Appellants/Petitioners

Vs.

1. M.Palanisamy
2. New India Assurance Co.Ltd.,  
No.17B, Gandhi Road, LIC of India,  
North Branch,  
Hasthampatty,  
Salem 636007.
3. R.Kanthayee

... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 to enhance the compensation amount awarded in the Fair and Final Order dated 01.11.2021 made in M.C.O.P.No.1995/2019 on the file of the Court of Motor Accident Claims Tribunal (Special District Court), Salem.



C.M.A.No.924 of 2023

WEB COPY

For Appellants : Mr.N.S.Elamugilan  
For R1 : Mr.S.Mayilnathan  
For R2 : Mr.J.Chandran  
For R3 : No appearance

### **JUDGEMENT**

Challenging as against the quantum of compensation awarded by the Special District Judge, Salem in M.C.O.P.No.1995 of 2019 dated 01.11.2021, the claimants are before this Court.

#### **2. The brief facts are as follows:-**

The appellants/petitioners are the wife, son and daughter of deceased Kutty Paiyan @ Periyannan. On 02.05.2019, the first appellant's husband was waiting on the left side of Thirumalaigiri road near water tank for crossing Mottaian street in the two wheeler, the first respondent's car bearing Registration No. TN 30-M 1537, belonging to the first respondent and insured with the second respondent/Insurance Company, driven by its driver in a rash and negligent manner, dashed



C.M.A.No.924 of 2023

WEB COPY

against the deceased, as a result of which, the deceased was thrown away and sustained grievous injuries all over his body and head. Immediately, he was rushed to the Government Hospital, Salem, however, he died on the way. Thereafter, the appellants have filed a claim petition claiming compensation of Rs.50,00,000/-.

3. The learned counsel for the appellants submitted that the deceased was working as Silver Smith and earning not less than Rs.30,000/- per month. However, the Tribunal has taken the monthly income of deceased at Rs.12,000/-, which is on the lower side, which requires to be reconsidered by this Court. Further, the Tribunal has not awarded any amount under the heads of “loss of estate” and “transportation” and the same may be awarded. Further, he contented that the deceased was aged 41 years at the time of accident and had three minor children, wife and dependent mother. However, no future prospects has been awarded by the Tribunal. Accordingly, he prays for appropriate enhancement in favour of the appellants.



C.M.A.No.924 of 2023

WEB COPY

4. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, the monthly income fixed by the Tribunal was fair and reasonable. Further, he fairly admitted to re-determine the monthly income of the deceased at Rs.15,000/- per month and also reasonable percentage of amount towards future prospects.

5. Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

6. The fact and manner of the accident is not disputed by the parties. Therefore, this Court is not dealing into the said aspect. The only grievance of the appellants is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the appellants that though the deceased at the age of 41 years had earned a sum of Rs.30,000/- as his monthly income, the Tribunal, without considering the same, had fixed the notional income at Rs.12,000/- per month. There is no dispute that the deceased had three minor children, wife and



C.M.A.No.924 of 2023

WEB COPY

dependent mother, who has been arrayed as third respondent. Taking into consideration that the deceased was working as Silver Smith at the time of accident, and applying the ratio laid down by the Apex Court in various cases, this Court is of the considered view that the deceased would have earned not less than Rs.20,000/- per month, and accordingly, this Court re-determined the notional income of the deceased as Rs.16,000/- per month. Adding future prospects at 25%, as has been held by the Constitution Bench of the Apex Court, the total income per month is quantified at Rs.20,000/-. Deducting 1/4<sup>th</sup> towards the personal expenses of the deceased, the loss of income is arrived at Rs.15,000/- per month and the deceased being aged about 41 years at the time of accident, as evidenced from the records, and adopting the multiplier '14' as per the decision of the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in (2009) 6 SCC 121, the loss of income to the family is arrived at Rs.15,000/- \* 12 \* 14 = Rs.25,20,000/-, which is worked out as follows :-



WEB COPY



C.M.A.No.924 of 2023

| <i>Loss of Income</i>                                                               | <i>Amount in Rs.</i> |
|-------------------------------------------------------------------------------------|----------------------|
| Notional income (Per month)                                                         | 16,000               |
| <b>Add:</b> Future Prospects (Rs.16,000 x 25%) (Per month)                          | 4,000                |
|                                                                                     | 20,000               |
| <b>Less:</b> Personal expenses (1/4 <sup>th</sup> ) (Rs.20,000/- x 1/4) (Per month) | 5,000                |
|                                                                                     | 15,000               |
| Notional income (per annum) (Rs.15,000/- x 12)                                      | 1,80,000             |
| Multiplier                                                                          | 14                   |
| <b>Total</b>                                                                        | <b>25,20,000</b>     |

7. The Tribunal has awarded Rs.1,00,000/- under the head of “loss of love and affection” to the claimants. The amount awarded under the said head ought to be re-determined as per the law laid down by the Hon'ble Apex Court. Therefore, this Court awarded a sum of Rs.40,000/- each to the appellants 2 to 4 and depending mother towards “love and affection”. Accordingly, the amount of Rs.1,00,000/- awarded by the Tribunal is enhanced to Rs.1,60,000/-. A sum of Rs.40,000/- has been granted to the first appellant under the head of "loss of consortium", which stands confirmed. No amount has been granted under the heads of



C.M.A.No.924 of 2023

WEB COPY

"loss of estate" and "transportation". Therefore, this Court is inclined to award a sum of Rs.15,000/-, and Rs.10,000/- respectively. A sum of Rs.25,000/-, awarded by the Tribunal under the head of "funeral expenses", which is on higher side and the same is reduced to Rs.15,000/-.

8. Accordingly, the compensation awarded by the Tribunal is modified as under :-

| <i><b>Heads</b></i>        | <i><b>Awarded by the<br/>Tribunal<br/>(Amount in<br/>Rs.)</b></i> | <i><b>Awarded by<br/>this Court<br/>(Amount in<br/>Rs.)</b></i> |
|----------------------------|-------------------------------------------------------------------|-----------------------------------------------------------------|
| Loss of Income             | <b>20,16,000/-</b>                                                | <b>25,20,000/-<br/>(enhanced)</b>                               |
| Loss of love and affection | <b>1,00,000</b>                                                   | <b>1,60,000/-<br/>(enhanced)</b>                                |
| Loss of consortium         | 40,000/-                                                          | 40,000/-                                                        |
| Funeral expenses           | 25,000                                                            | <b>15,000/-<br/>(reduced)</b>                                   |
| Transportation             | <b>Nil</b>                                                        | <b>10,000/-</b>                                                 |
| Loss of estate             | <b>Nil</b>                                                        | <b>15,000/-</b>                                                 |
| <b>Total</b>               | <b>15,09,000/-</b>                                                | <b>27,60,000/-</b>                                              |



C.M.A.No.924 of 2023

WEB COPY

9. The appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from Rs.15,09,000/- to Rs.27,60,000/-. The second respondent/Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.1995 of 2019 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the respective bank accounts, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimants or application for withdrawal from the claimant, whichever is earlier. Further, this Court is directed to deposit a sum of Rs.12,00,000/- to the first claimant, who is the wife of deceased; a sum of Rs.3,60,000/- to the mother of deceased and a sum of Rs.4,00,000/- each to the minor appellants 2, 3 and 4. The amount in respect of the minor shall be deposited in a Nationalized Bank, till they attain majority, the yearly basis interest can be withdrawn by the first appellant for the maintenance of the minors. The appellants/claimants are



C.M.A.No.924 of 2023

WEB COPY

directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee has been produced by the claimants. No costs.

**05.01.2024**

Index : Yes / No  
NCC : Yes / No  
jd

To

1. The Motor Accident Claims Tribunal,  
Special District Court,  
Salem.
2. The Section Officer,  
V.R. Section,  
High Court, Madras.



WEB COPY



C.M.A.No.924 of 2023

**Krishnan Ramasamy,J.,**

jd

**C.M.A.No.924 of 2023**

**05.01.2024**