



C.M.A(MD)No.409 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

C.M.A(MD)No.409 of 2024

1.R.Muniappan
2.M.Valarmathi

... Appellants/Petitioners

Vs.

1.M.Rajamanickam
2.S.Muthusamy
3.National Insurance Co.Ltd.,
Having Office at No.63, Rasi Plaza,
West Pradhakshnam Road,
Karur.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to enhance the compensation Award and Decreetal order, dated 25.02.2020 made in M.C.O.P.No.211 of 2017 on the file of the Motor Accident Claims Tribunal / District Court, Karur and allow the Civil Miscellaneous Appeal.



C.M.A(MD)No.409 of 2024

For Appellants : Mr.R.Devaraj
For R1 : Service Awaited
For R2 : Mr.R.Alagumani
For R3 : Mr.A.Ilango

JUDGMENT

(Judgment of the Court was delivered by P.VADAMALAI, J.)

This Civil Miscellaneous Appeal is filed to enhance the compensation Award, dated 25.02.2020 passed in M.C.O.P.No.211 of 2017 by the Motor Accident Claims Tribunal/District Court, Karur.

2. The petitioners/claimants in M.C.O.P.No.211 of 2017 are the appellants herein.

3. The petitioners/claimants are the dependents/parents of the deceased Lenin, who died in a road traffic accident.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 211 of 2017 is adopted hereunder.



C.M.A(MD)No.409 of 2024

5. The brief facts of the case:

On 28.02.2017 at 9.00 p.m. the deceased Lenin was riding his two wheeler bearing registration number TN 47 M 8329 from Ganapathipalyam to Kaliappanur along the Muthaladampatti to Arts College road from east to west while nearing Aadhi Bus Body Coach, the 2nd respondent's lorry bearing registration number TN 47 T 5076 driven by the 1st respondent in a rash and negligent manner from opposite direction dashed against the deceased. Due to impact, the deceased sustained fatal injuries and died on the spot. The deceased was working as an Assistant Manager at Bank of Baroda, Karur, and was earning Rs.45,919/- p.m. The deceased was a bachelor at the time of accident. The petitioners are parents of the deceased and they were depending on the income of the deceased Lenin. The offending vehicle bearing registration number TN 47 T 5076, belonging to the 2nd respondent, was insured with the 3rd respondent. Hence, the petitioners filed the claim petition seeking compensation of Rs.1,50,00,000/-.

6. The respondents 1 and 2, who are the driver and owner of the lorry, contended that the lorry was driven by the 1st respondent observing



C.M.A(MD)No.409 of 2024

traffic rules with moderate speed. The deceased came in his bike in rash and negligent manner at high speed from opposite direction and without noticing a pit, he fell down and invited the accident. So, the deceased alone was responsible for the accident. The lorry was duly insured with the 3rd respondent at the time of accident.

7. The 3rd respondent/Insurance Company objected the claim petition by contending that the 2nd respondent's vehicle was not driven by its driver/1st respondent in a rash and negligent manner. The deceased had ridden his two wheeler in a rash and negligent manner with high speed, hit the lorry and invited the accident. So, the petitioners are not entitled for compensation.

8. The Tribunal has tried the M.C.O.P.No.211 of 2017. On the side of the petitioners, P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.13 were marked. On the side of respondents, no oral evidence let in and no document was marked.



C.M.A(MD)No.409 of 2024

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9. After hearing both and after considering the evidences, the Tribunal has passed the impugned order and awarded a total compensation of Rs.42,48,680/- with interest.

10. Aggrieved by the said award, the petitioners have preferred this Civil Miscellaneous Appeal seeking for enhanced compensation.

11. Heard both sides and perused the records in this Civil Miscellaneous Appeal.

12. The point for determination is whether the petitioners are entitled for enhanced compensation as sought in this Civil Miscellaneous Appeal.

13. Upon hearing both, there is no dispute that the 1st respondent is responsible for the accident, who drove the offending lorry in a rash and negligent manner as seen from Ex.P.1 – F.I.R. and also the lorry was insured with the 3rd respondent.



C.M.A(MD)No.409 of 2024

WEB COPY

14. The learned counsel for the petitioner has submitted that the respondents did not raise about the avocation of the deceased and his age 37 years at the time of accident. The pay certificate of the deceased was produced as Ex.P.13, which showed the monthly income of the deceased as Rs.45,652/- p.m. Though the Tribunal held the monthly income of the deceased as per Ex.P.13, the Tribunal did not consider future prospects. The learned counsel for the 3rd respondent has also not raised any objection against the argument of the petitioners' side and also filed a calculation memo. The said calculation memo was conceded by the petitioners' side.

15. As per the calculation memo filed by the 3rd respondent, the monthly income of the deceased was taken as Rs.45,652/- and added 50% of income towards future prospects at Rs.22,826/- and thereby, the total income of the deceased is arrived at Rs.68,478/- p.m. The deceased died as a bachelor and the petitioners are parents, so 50% of income at Rs.34,239/- is deducted towards personal expenses. Hence, the monthly income of the deceased is arrived at Rs.45,652/- + Rs.22,826/- = Rs.68,478/-, after deducting 50% towards personal expenses the loss of income is arrived at Rs.34,239/- p.m. Applying the same, the income of the deceased after deducting 50% is fixed at



C.M.A(MD)No.409 of 2024

WEB COPY

Rs.34,239/- (Rs.68,478/- x 50%). Considering the age of the deceased as 37, the multiplier 15 is correct as per **Sarla Verma** case. Therefore, the loss of income is arrived as Rs.34,239/- x 12 x 15 = Rs.61,63,020/-.

16. Considering the award passed by the Tribunal, the Tribunal awarded Rs.15,000/- towards loss of estate; Rs.15,000/- towards funeral expenses and Rs.10,000/- towards transport expenses. There is no dispute on both sides. But, while awarding compensation under the head love and affection the Tribunal awarded Rs.50,000/- each, totally Rs.1,00,000/- to the petitioners. The Tribunal has failed to consider the settled principle as laid down in **Pranay Sethi Case of the Hon'ble Supreme Court** reported in **TN 2017 (2) TNMAC 609 (SC)**. It is settled that Rs.40,000/- has to be awarded towards loss of parental consortium, spousal consortium and filial consortium and also there should be an enhancement of 10% on consortium once in every three years. The accident occurred in 2017 and the Tribunal passed award in 2020. Hence, 10% should be added in awarding compensation towards love and affection. Thereby, the petitioners are entitled to Rs.44,000/- each towards love and affection.



C.M.A(MD)No.409 of 2024

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17. According to calculation memo filed by the 3rd respondent, a sum of Rs.13,40,205/- has been shown towards income tax over the total income of Rs.8,21,736/- (Rs.68,478/- x 12) arrived at in the year 2016 - 2017 i.e., income tax arrived at Rs.89,347/- on total income of Rs.8,21,736/- and the said Rs.89,347/- multiplied with multiplier '15' (Rs.89,347/- x 15) = Rs.13,40,205/-. The petitioners have also not raised any objection regarding income tax deduction.

18. Thus, this Court holds that the total compensation payable to the appellants/petitioners/claimants in M.C.O.P.No.211 of 2017 as follows:

Sl. No.	Description	Amount awarded by this Court
1.	Loss of Income (Rs.34,239/- x 12 x 15) less income tax Rs.13,40,205/- (Rs.61,63,020/- - Rs.13,40,205/-)	Rs.48,22,815/-
2.	Towards Funeral Expenses	Rs. 15,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Loss of Consortium to the Petitioners, being parents of the deceased (Rs.44,000/- x 2)	Rs. 88,000/-
5.	Transport	Rs. 10,000/-
	Gross Total	Rs. 49,50,815/-



C.M.A(MD)No.409 of 2024

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Therefore, the petitioners/claimants in M.C.O.P.No.211 of 2017 are entitled to Rs.49,50,815/-. Therefore, to that extent, the compensation awarded by the Tribunal is enhanced and fixed as Rs.49,50,815/-. In respect of apportionment, the award has to be confirmed.

19. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.42,48,680/- to Rs.49,50,815/- (Rupees Forty nine lakhs fifty thousand eight hundred and fifteen only).

(iii) The third respondent /Insurance Company is directed to deposit the enhanced compensation amount of Rs.49,50,815/- (Rupees Forty nine lakhs fifty thousand eight hundred and fifteen only), 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 to the credit of M.C.O.P.No. 211 of 2017 on the file of the Motor Accident Claims Tribunal/District Court, Karur, within a period of six weeks from the date of receipt of a copy of this order.



C.M.A(MD)No.409 of 2024

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(iv) On such deposit being made, the appellants/Parents of the deceased are permitted to withdraw the entire award amount of Rs.49,50,815/- along with proportionate interest and cost in equal shares, less the amount already withdrawn if any, by filing appropriate application before the Tribunal.

(N.S.S.,J.) (P.V.M.,J.)
18.04.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

- 1.The Motor Accident Claims Tribunal / District Court,
Karur
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.409 of 2024

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VSD

Judgment made in
C.M.A(MD)No.409 of 2024

18.04.2024