



C.M.A.(MD) Nos.601 & 602 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.08.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) Nos.601 & 602 of 2024

1.Krishna Priya
W/o.Durai

2.Subbulakshmi
W/o.Muthukumar

3.Sudalaimani
S/o.Gopal Yadav

... Appellants in
both C.M.As.

Vs.

1.Sudhakar
S/o.Arumugam

2.The New India Assurance Company Limited,
Through its Branch Manager,
No.17, Fort Main Road,
Second Floor, Shevapet,
Salem – 636 002.

... Respondents in
both C.M.As.

[R1 was set *exparte* before the Tribunal. Notice to R1 was dispensed with by this Court *vide* common order dated 17.04.2024 passed in C.M.P.(MD) Nos.5491 & 5492 of 2024 in C.M.A.(MD) SR.No.25622 & 25623 of 2024]



C.M.A.(MD) Nos.601 & 602 of 2024

Common Prayer:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 praying to enhance the compensation awarded by the Motor Accidents Claims Tribunal (III Additional District Court), Tirunelveli *vide* its common Judgment and Decree dated 16.11.2023 in M.C.O.P.Nos.897 & 1000 of 2019.

For Appellants
in both C.M.As. : Mr.T.Selvakumaran

For R2
in both C.M.As. : Mr.B.Rajesh Saravanan

COMMON JUDGMENT

This instant Civil Miscellaneous Appeals have been filed by the claimants seeking enhancements of compensations awarded by the Motor Accidents Claims Tribunal (III Additional District Court), Tirunelveli *vide* its common Judgment and Decree dated 16.11.2023 passed in M.C.O.P.Nos.897 and 1000 of 2019.

2. The appellants/claimants had filed two separate claim petitions in M.C.O.P.Nos. 897 and 1000 of 2019, one for the death of their father and the other for the death of their mother. M.C.O.P.No.897 of 2019 [C.M.A. (MD) No.601 of 2024] was filed for the death of the appellants' father.



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M.C.O.P.No.1000 of 2019 [C.M.A.(MD) No.602 of 2024] was filed for the death of the appellants mother.

3. The case of the appellants/claimants is that on 21.03.2019, at about 01.00 a.m., the Car bearing Reg.No.TN-37-CP-3408, in which the appellants' parents were travelling, had collided with a Stationary Lorry bearing Reg.No.TN-30-AC-7789 which was parked by its driver in the middle of the road without switching on the parking lights. In that collision, the parents of the appellants/claimants died on the spot.

4. The appellants/claimants, in both the claim petitions, had examined one witness and marked 11 exhibits. The Tribunal after taking into consideration of the oral and documentary evidences held that the accident took place due to the negligence of the driver of the lorry and the second respondent Insurance Company being the insurer of the said lorry was liable to pay the following compensations together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization (excluding the period of dismissal for default if any) and costs:-



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Sl. No.	C.M.A.(MD) No.	M.C.O.P. No.	Amount	Name and Relationship of the deceased person
1	601/2024	897/2019	Rs.13,41,800/-	Gopal Yadav (Father of the Appellants)
2	602/2024	1000/2019	Rs.14,00,000/-	Krishnaveni (Mother of the Appellants)

5. The learned counsel for the appellants/claimants submitted that the notional income fixed by the Tribunal in both cases is meagre; that no compensation was awarded under the head of 'Loss Consortium' and sought for enhancement of the compensation.

6. The learned counsel for the second respondent Insurance Company submitted that in the absence of any proof of income, the Tribunal has rightly fixed the notional income for both deceased and hence, no interference calls for.

7. This Court has carefully considered the rival submissions made by the learned counsel for the appellants and the learned counsel for the second respondent Insurance Company.

8. The common question in both cases is 'whether the compensation awarded by the Tribunal is just and reasonable?'



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9. In C.M.A.(MD) No.601 of 2024 challenging the Award in M.C.O.P.No.897 of 2019, it is seen that the deceased was running a Bakery. The appellants have marked Ex.P7 to show that the deceased obtained License to run the Bakery and Ex.P8 Bank Statement of Account of the deceased to prove his income.

10. Considering the nature of the evidences let in by the appellants to prove the avocation and income of the deceased, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.15,000/- per month. It is also seen that the appellants/claimants, who are the children of the deceased, are entitled to Rs.40,000/- each towards 'Loss of Consortium', totaling to Rs.1,20,000/-. Since there are three dependents, $\frac{1}{3}^{\text{rd}}$ of his income has to be deducted towards personal expenses. The multiplier applicable is 11. Thus, the appellants/claimants would be entitled to the total compensation of Rs.16,07,000/- as follows:-

<i>Heads and Calculation</i>	<i>Amount</i>
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Loss of Dependency:-

(Age of the deceased - 53)

Notional Monthly Income : Rs.15,000/-

Add: Future Prospects at 10%
[Rs.15,000/- x 10/100] : Rs. 1,500/-

: Rs.16,500/-

Less : Personal Expenses at 1/3rd
[16,500 x 1/3] : Rs. 5,500/-

: Rs.11,000/-

Annual contribution to the family
[Rs.11,000/- x 12] - Rs.1,32,000/-

Multiplier - 11 [1,32,000 x 11] - Rs.14,52,000/-

Rs.14,52,000/-

Loss of Consortium [Rs.40,000/- x 3]

Rs. 1,20,000/-

Loss of Estate

Rs. 10,000/-

Funeral Expenses

Rs. 15,000/-

Transportation Charges

Rs. 10,000/-

Total

Rs.16,07,000/-

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of Dependency	Rs.13,06,800/-	Rs.14,52,000/-	Enhanced
2	Loss of Consortium	-	Rs. 1,20,000/-	Granted
3	Loss of Estate	Rs. 10,000/-	Rs. 10,000/-	Confirmed
4	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
5	Transportation Charges	Rs. 10,000/-	Rs. 10,000/-	Confirmed



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Total	Rs.13,41,800/-	Rs.16,07,000/-	Enhanced by Rs.2,65,200/-
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11. As regards C.M.A.(MD) No.602 of 2024 challenging the Award in M.C.O.P.No.1000 of 2019, it is seen that the Tribunal has fixed the notional income at Rs.10,500/- per month even though the deceased was a housewife. It is also seen that the notional income fixed by the Tribunal at Rs.10,500/- per month is on the lower side. Considering the age of the deceased and the nature of evidences let in by the appellants/claimants, it would be just and reasonable to fix the notional income at Rs.12,500/- per month. Since the deceased was aged 48 years at the time of death, 25% has to be added towards future prospects. Thus, the appellants/claimants would be entitled to the total compensation of Rs.17,79,974/- as follows:-

<i>Heads and Calculation</i>	<i>Amount</i>
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C.M.A.(MD) Nos.601 & 602 of 2024

Loss of Dependency:-

(Age of the deceased - 48)

Notional Monthly Income	: Rs.12,500.00	
Add: Future Prospects at 25% [Rs.12,500/- x 25/100]	: Rs. 3,125.00	

	: Rs.15,625.00	
Less : Personal Expenses at 1/3 rd [15,625 x 1/3]	: Rs. 5,208.50	

	: Rs.10,416.50	
Annual contribution to the family [Rs.10,416.50 x 12]	- Rs.1,24,998/-	
Multiplier - 13 [1,24,998 x 13]	- Rs.16,24,974/-	Rs.16,24,974/-
Loss of Consortium [Rs.40,000/- x 3]		Rs. 1,20,000/-
Loss of Estate		Rs. 10,000/-
Funeral Expenses		Rs. 15,000/-
Transportation Charges		Rs. 10,000/-
Total		Rs.17,79,974/-

Sl. No	Description	Amount awarded by the Tribunal	Amount awarded by this Court	Award confirmed, enhanced or granted
1	Loss of Dependency	Rs.13,65,000/-	Rs.16,24,974/-	Enhanced
2	Loss of Consortium	-	Rs. 1,20,000/-	Granted
3	Loss of Estate	Rs. 10,000/-	Rs. 10,000/-	Confirmed
4	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
5	Transportation Charges	Rs. 10,000/-	Rs. 10,000/-	Confirmed



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Total

Rs.14,00,000/-

Rs.17,79,974/-

Enhanced by
Rs.3,79,974/-

12. The second respondent Insurance Company is directed to deposit Rs.16,07,000/- [C.M.A.(MD) No.601 of 2024] and Rs.17,79,974/- [C.M.A.(MD) No.602 of 2024] together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization (excluding the period of dismissal for default if any) and costs, less the amount already deposited, if any, within a period of 6 weeks from the date of receipt of a copy of this order.

13. On such deposit, the appellants are entitled to withdraw the aforesaid amount together with proportionate interest and costs, equally, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal. The appellants are directed to pay the necessary court fee, if any, on the enhanced amount.

14. In the result, both Civil Miscellaneous Appeals are partly allowed. No costs.



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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order / Non-Speaking Order

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Copy To:

The III Additional District Judge,
Motor Accidents Claims Tribunal,
Tirunelveli.

Issue order copy on 16.08.2024.



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SUNDER MOHAN, J.

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