



C.M.A.(MD) Nos.815 of 2023 & 527 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) Nos.815 of 2023 & 527 of 2024

In C.M.A.(MD)No.815 of 2023:

1.Shanmugavel,
Mariammal (died)
2.Saravanakumar,
3.Somasundari.

... Appellants

Vs.

1.Essakiammal,
2.Minor.Nithish,
3.Minor.Jeyalakshmi
(Minor appellants 2 and 3 are represented through
their mother and next friend-first respondent)
4.P.Suseela
5.The Oriental Insurance Co. Ltd.,
Divisional Office,
Coimbatore, through its Divisional Manager.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.03.2023 passed in M.A.C.O.P.No.110 of 2016 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court), Tirunelveli.

For Appellants

: Ms.R.Jenifer Bibin



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For Respondents	:
for R1 to R3	: Mr.M.Jothi Rama Lingam
for R5	: Mr.C.Karthik
for R4	: Dispensed with

In C.M.A.(MD)No.527 of 2024:

1.Essakiammal,
2.Minor.Nithish,
3.Minor.Jeyalakshmi
(Minor appellants 2 and 3 are represented through
their mother and next friend-first appellant) ... Appellants

Vs.

1.P.Suseela
2.The Oriental Insurance Co. Ltd.,
Divisional Office,
Coimbatore, through its Divisional Manager.

3.Shanmugavel,
Mariammal (died)
4.Saravanakumar,
5.Somasundari. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.03.2023 passed in M.A.C.O.P.No.110 of 2016 on the file of the Chief Judicial Magistrate Court, Tirunelveli.

For Appellants : Mr.M.Jothi Rama Lingam

For Respondents : Mr.C.Karthik for R2



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COMMON JUDGMENT

C.M.A.(MD)No.527 of 2024 has been filed by the wife and children of the deceased seeking enhancement of the compensation. C.M.A. (MD)No.815 of 2023 has been filed by the parents of the deceased, aggrieved by the fact that no compensation was awarded to them. In view of the above, both the appeals are taken up together.

2. The appellants in C.M.A.(MD)No.527 of 2024 filed a claim petition in M.C.O.P.No.110 of 2016 stating that on 14.11.2015, while the deceased was riding his two wheeler on the extreme left side of the road, a bus insured with the second respondent came in a rash and negligent manner and dashed against the motor cycle, as a result of which, the deceased sustained fatal injuries.

3. The owner of the bus remained *ex parte* before the Tribunal.

4. The second respondent in C.M.A.(MD)No.527 of 2024 filed a counter stating that the accident took place only due to the negligence of the deceased; that in any case, the compensation claimed by the claimants



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was excessive; and that the parents of the deceased had filed M.C.O.P.No.

112 of 2016 for the same accident, and hence, the claim petitions were not maintainable.

5. The parents of the deceased, namely, the appellants in C.M.A.(MD)No.815 of 2023, had filed an independent claim petition in M.C.O.P.No.112 of 2016, which was dismissed and subsequently, they were impleaded as the respondents in the claim petition filed by the claimants/appellants in C.M.A.(MD)No.527 of 2024 in M.C.O.P.No.110 of 2016 *vide* the order dated 15.09.2022 in I.A.No.5 of 2022 by the Tribunal.

6. The claimants/appellants in C.M.A.(MD)No.527 of 2024 examined two witnesses as P.W.1 and P.W.2 and marked Exs.P1 to P6. The respondents neither examined any witnesses nor marked any documents.

7. The Tribunal, after taking into consideration the oral and documentary evidence, held that the driver of the insured vehicle was guilty of rash and negligent driving and that the second respondent in



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C.M.A.(MD)No.527 of 2024/Insurance Company has to pay the total compensation at Rs.11,74,000/-. However, the Tribunal had not awarded any compensation to the parents of the deceased. The mother of the deceased died pending disposal of the claim petition, and the siblings of the deceased as legal heirs of the mother, were impleaded as the respondents along with the father of the deceased in the claim petition.

8. The learned counsel for the appellants in C.M.A.No.527 of 2024 submitted that the deceased was working as an LIC agent and also employed in an Oil Mill Company as an Accountant. However, the Tribunal had fixed very meagre notional income at Rs.8,000/- and had awarded meagre compensation under the head 'loss of consortium'. Hence, the compensation has to be enhanced.

9. The learned counsel for the appellants in C.M.A.(MD)No.815 of 2023 submitted that the parents of the deceased were also dependents of the deceased and the Tribunal had erred in not awarding any compensation to them and hence, the compensation ought to be awarded to the father of the deceased and the legal heirs of the mother of the deceased.



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WEB COPY 10. The learned counsel for the second respondent in C.M.A. (MD)No.524 of 2024/Insurance Company, per contra, submitted that the Tribunal had fixed the notional income correctly; that even as per the records furnished by the claimants, the deceased had not earned more than Rs.8,000/- p.m., and therefore, the notional income fixed by the Tribunal at Rs.8,000/- is justified; and therefore, there is no reason to enhance the compensation and hence, prayed for dismissal of the appeals.

11. The points for consideration in the instant appeals are as follows:

'a. Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

b. Whether the appellants in C.M.A.(MD)No.815 of 2023, who are the father and the legal heirs of the mother of the deceased, are entitled to the compensation?'

12. As regards the first point, it is seen that P.W.1- wife of the deceased had stated before the Tribunal that the deceased was employed as an LIC agent and was also working as an Accountant in an Oil Mill



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Company. However, no documentary evidence was produced either to establish the avocation or the exact income earned by the deceased.

Ex.P6-Bank Passbook of the deceased would suggest that he had been receiving certain commissions from the LIC, thereby, establishing that he was working as an agent in the LIC. In the absence of any proof as regards the income, this Court is of the view that only a notional income can be taken for computing 'loss of income'. However, the notional income fixed by the Tribunal at Rs.8,000/-, considering the year of the accident and the avocation of the deceased, is meagre. Therefore, considering the age of the deceased, his avocation and the year of the accident, this Court is of the view that a sum of Rs.12,000/- p.m. can be fixed as notional income. Admittedly, the deceased was aged 35 years at the time of the accident. Hence, 40% has to be added towards future prospects. The multiplier applicable is '16'. Since there were five dependents at the time of his death, $\frac{1}{4}$ has to be deducted towards his personal expenses. The award of compensation under the head 'loss of income' has to be Rs.12,000/- + Rs.4,800/- x 12 x 16 x $\frac{3}{4}$ = Rs.24,19,200/-.

13. The compensation under the heads 'loss of consortium' and 'loss of love and affection' is not in accordance with the guidelines laid down



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by the Hon'ble Supreme Court. In this case, five claimants were alive at the time of the accident, namely, the father, mother, wife and children of the deceased, who are each entitled to Rs.40,000/- under the head 'loss of consortium'. Hence, a sum of Rs.2,00,000/- has to be awarded under the head 'loss of consortium'.

14. The award under the head 'transport expenses' is unwarranted as no proof has been produced on the side of the claimants. The compensation under the other heads is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

<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 Income	Rs.10,24,000/-	Rs.24,19,200/-	Enhanced
2	Loss of consortium and loss of love and affection (Rs.50,000/- + Rs. 50,000/-)	Rs. 1,00,000/-	Rs. 2,00,000/-	Enhanced
3	Funeral expenses	Rs. 20,000/-	Rs. 20,000/-	Confirmed
4	Transport expenses	Rs. 10,000/-	----	Deleted
5	Loss of Estate	Rs. 20,000/-	Rs. 20,000/-	Confirmed
Total		Rs.11,74,000/-	Rs.26,59,200/-	Enhanced by Rs.14,85,200/-



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15. It is seen that the appellants in C.M.A.(MD)No.815 of 2023 are the father and the legal heirs of the mother of the deceased. This Court is of the view that the legal heirs of the mother of the deceased, who are the siblings of the deceased, are not entitled to any compensation. However, the father, namely, the first appellant in C.M.A.(MD)No.815 of 2023, is entitled to compensation. Out of the compensation amount, this Court is of the view that a sum of Rs.2,00,000/- can be awarded to the father/first appellant in C.M.A.(MD)No.815 of 2023.

16. The second respondent in C.M.A.(MD)No.527 of 2024/Insurance Company shall deposit the enhanced compensation amount of Rs.26,59,200/- (Rupees Twenty Six Lakhs Fifty Nine Thousand and Two Hundred only) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization (excluding the period of dismissal for default if any) and proportionate costs, after deducting the amount already deposited if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

17. On such deposit, the appellants in C.M.A.(MD)No.527 of 2024 are equally entitled to a total sum of Rs.24,59,200/- (Rupees Twenty Four



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Lakhs Fifty Nine Thousand and Two Hundred only) with interest at 7.5%

p.a., less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.

18. The first appellant in C.M.A.(MD)No.815 of 2023 is permitted to withdraw a sum of Rs.2,00,000/- with interest at 7.5% p.a., by filing appropriate application before the Tribunal.

19. The Tribunal is directed to deposit the share amount of the minor claimants/appellants 2 and 3 in C.M.A.(MD)No.527 of 2024 in any one of the Nationalized Bank in an interest bearing Fixed Deposit, initially for a period of three years, renewable thereafter, till the minors attain majority. The guardian of the minors/first appellant in C.M.A. (MD)No.527 of 2024, who is their mother, is permitted to withdraw interest from the said deposit, once in three months and utilise the same for the welfare of the minors claimants/appellants 2 and 3 in C.M.A. (MD)No.527 of 2024.



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20. In the result, these Civil Miscellaneous Appeals are partly

allowed. No costs.

19.09.2024

Index: Yes/ No

NCC: Yes / No

Speaking Order / Non-Speaking Order
apd

To:

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Tirunelveli.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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