



C.M.A(MD)No.106 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :21.08.2024

CORAM

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

C.M.A(MD)No.106 of 2021

1.S.Parminal Beevi

2.Minor S.Ayisha Banu

3.Minor S.Athiba

4.A.Hafiba

5.K.Abdul Karim

... Appellants

(Minor petitioners 2 and 3 are represented
through their mother and guardian first
petitioner)

Vs.

1.V.Subramanian

2.The Branch Manager,
United India Insurance Company Limited,
Seethalakshmi Complex,
GST Road, Thirunagar,
Madurai -625 006.

... Respondents



C.M.A(MD)No.106 of 2021

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PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 11.12.2018 passed in M.C.O.P.No.50 of 2018 on the file of the Motor Accident Claims Tribunal (Chief judicial Magistrate), Virudhunagar at Srivilliputhur, relating to the quantum of compensation granted by the Tribunal.

For Appellants : Mr.S.Srinivasa Raghavan

For Respondents : No appearance (For R1)
Mr.J.S.Murali (For R2)

J U D G M E N T

(Judgment of the Court was made by **K.K.RAMAKRISHNAN, J.,**)

The claimants filed this appeal challenging the quantum of the award passed in M.C.O.P.No.50 of 2018, dated 11.12.2018, by the Motor Accident Claims Tribunal (Chief judicial Magistrate), Virudhunagar at Srivilliputhur.

2.The claimants filed the claim petition in M.C.O.P.No.50 of 2018, claiming a sum of Rs.95,00,000/- (Rupees Ninety Five Lakhs only) as



C.M.A(MD)No.106 of 2021

WEB COPY

compensation for the death of the husband of the first petitioner. By the award, dated 11.12.2018, the Tribunal awarded a sum of Rs.23,98,000/- (Rupees Twenty Three Lakhs and Ninety eight thousands only) as compensation along with 7.5% interest from the date of filing of the claim petition.

3.Facts of the case:

The first petitioner is the wife of the deceased, the second and third petitioners are daughters and four and fifth petitioners are parents of the deceased. On 26.02.2017 at about 6.50 a.m., when the deceased was proceeding on the left side in Rajapalayam- Tenkasi Road, from west to east direction, in front of Senkottayan Hotel, Sethur, in his two wheeler bearing Registration No.TN 76 B 2174, a Tanker Lorry bearing Reg.No. TN 76 M 1122, insured by the second respondent insurance company was driven by the driver of the first respondent, in a rash and negligent manner with uncontrollable speed going in the same direction, hit the deceased and hence, he sustained multiple grievous injuries on his body and died on the spot. Based on the complaint given by one independent witness namely, P.W.2, the Sub Inspector of Sethur Police Station,



C.M.A(MD)No.106 of 2021

WEB COPY

registered a FIR in Crime No.70 of 2017 for the offences under Sections 279 and 304(A) of IPC against the driver of the first respondent. The deceased worked as a labour in foreign country continuously and earning Rs.45,226/- as monthly income and at the time of the accident, he came to India on leave. Therefore, the appellants have filed the claim petition in M.C.O.P.No.50 of 2018 on the file of the Motor Accident Claims Tribunal (Chief judicial Magistrate), Virudhunagar at Srivilliputhur, claiming a sum of Rs.95,00,000/- (Rupees Ninety Five Lakhs only) as compensation.

3.1. The insurance company filed a counter denying the allegation stated in the petition and they disputed the quantum and also disputed the negligence on the part of the first respondent. They also denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving of the driver of the first respondent. The deceased did not wear the helmet at the time of accident and hence, he himself invited the accident and prayed for dismissal of the claim petition.



C.M.A(MD)No.106 of 2021

WEB COPY

3.2.The claimants to prove the claim examined 2 witnesses and marked Ex.P1 to Ex.P27. The Insurance Company has neither examined any witness nor produced any document.

4.Finding of the Tribunal:

The learned Tribunal Judge considering the materials available on records, has held that the accident happened due to the rash and negligent driving of the driver of the lorry, and based on the various documents, namely, Ex.P.11 and Ex.P.14, fixed the monthly income of the deceased as Rs.12,000/- and added 40% for future prospect considering his age of 38 years at the time of the accident and applied multiplier 15 after the statutory deduction of $\frac{1}{4}^{\text{th}}$ for his personal expenditure and has arrived loss of income of Rs.22,68,000/ and adding the conventional damages the Tribunal awarded total compensation of Rs.23,98,000/- with interest of 7.5%, vide impugned order dated 11.08.2018 under the following heads:-



C.M.A(MD)No.106 of 2021

<i>Heads</i>	<i>Amount in Rupees</i>
Loss of Income	22,68,000/-
Love and affection	60,000/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Loss of Consortium	40,000/-
Total	23,98,000/-

Aggrieved over the quantum arrived by the learned Tribunal Judge, the claimants have filed the present appeal to enhance the compensation.

5.Submission of the learned counsel for the appellants/claimants:

Mr.S.Srinivasaraghavan, learned counsel for the claimants submitted that Exs.P.11, P.12, P.13, P.14 are all produced to prove the long employment of the deceased in the foreign country and also to prove the income of the deceased as Rs.45,266/-. The learned Tribunal Judge erred in disbelieving the Ex.P.14 salary certificate issued by the company for the reason that no body was examined from the said foreign company. But, the learned Tribunal Judge gave a finding that deceased was under



C.M.A(MD)No.106 of 2021

the employment in the foreign country. The Tribunal also failed to grant Rs.40,000/- under the head of love and affection to each claimants namely, the appellants No.2 to 5. Therefore, he seeks for the enhancement of the compensation.

6.Submissions of the learned counsel for the Insurance company/second respondent:

The learned counsel for the insurance company/second respondent submitted that the learned Tribunal Judge correctly disbelieved the Ex.P. 14 for the reason that author of the certificate was not examined. There was no evidence to substantiate and to believe his employment in the foreign country. Hence, the learned Tribunal Judge correctly taken monthly income of the deceased Rs.12,000/- notionally and there is no reason to interfere with. But, the learned counsel fairly submitted that the appellants 2 to 4 are entitled to Rs.40,000/- under the head of love and affection. Therefore, they are entitled to enhancement of Rs.1,00,000/- in addition to the already awarded amount.

7.This Court considered the rival submissions made on either side and perused the records.



C.M.A(MD)No.106 of 2021

WEB COPY

8.The only question that arise for consideration of the appeal is Whether the claimants/appellants are entitled to receive enhanced compensation or not?

9.P.W.1 is the wife of the deceased. She deposed that her husband was working for a long time in the foreign company. The same was clearly proved by the Ex.P.11/Passport. In the Passport, there is a periodical entry to show his travelling. Ex.A13 and A14 were marked to show the employment of the deceased and monthly salary of the deceased. In Ex.A13, it is stated as follows:

He was working in my company since from 16 Month and his salary was 2500 Riyal and went vacation on 29 Jan 2017 and this vacation was 3 month as I here that he met with accident in India.

10.From the above, it is clear that the deceased came on vacation, and the said plea is further corroborated by Ex.A12. In the Visa, Ex.A12, it can be seen that the company itself took the flight ticket with the date



C.M.A(MD)No.106 of 2021

WEB COPY

of departure from the foreign country and also date of returning to the foreign country. The departure date from Riyadh, was 28.01.2017. The said departure is corroborated by the passport entry at Tiruvandram Airport, on 29.01.2017, under Ex.A11/Passport. Therefore, the claimants have proved the employment of deceased in the foreign country and he was working for a long time in the foreign country and he met with the accident on his arrival on vacation to India. The above all documents were marked without objection. The insurance company even though made incisive cross examination of P.W.1, nothing was elicited to dispute the above document. There was no cross examination relating to the genuineness and the foreign employment of deceased. The learned Tribunal judge also gave a finding that deceased worked in the foreign country on the basis of Ex.A13 and Ex.A14. But, he erroneously has not taken the monthly salary of deceased as “Rs,2,500/- Riyal”. This Court is unable to accept the reasoning of the learned Tribunal Judge that the monthly income mentioned in the said Ex.A13 could not be accepted for non examination of the author of the document. It is impossible to examine the employer who has office in the foreign country. It is also well settled principle that the litigant cannot be expected to prove the



C.M.A(MD)No.106 of 2021

WEB COPY

impossible thing as held by the Hon'ble Supreme Court in the following case:

In the case of *Vinod Krishna Kaul vs State* reported in **1996(1) SCC 41**

The legal maxim lex non cogit ad impossibilia has to be borne in mind, ie., the law does not compel a person to do the impossible.

It is settled principle that the claim before the motor vehicle Tribunal is summary proceedings and the claimants need not prove the case beyond reasonable doubt. The claimants produced the salary certificate and all the connected documents to prove the monthly income. The same was marked without objection and there was no dispute during the course of cross examination.

11. Therefore, considering the circumstances that the evidence of the P.W.1 that her husband was working in the foreign country and earned 2,500/- Riyal and the same is corroborated by the undisputed documents Ex.A13 and Ex.A14, Ex.A11 and Ex.A12, this Court is setting aside the finding of the learned Tribunal Judge that Ex.A14 was



C.M.A(MD)No.106 of 2021

liable to be rejected for non examination of the author of the document.

In result, this Court fixes the monthly income of the deceased on the basis of Exs.A14 and A13 as 2,500 Riyal and the corresponding Indian value of Rs.45,000/-.

12.The deceased aged about 38 years on the date of accident and hence, 40% for future prospects is to be added and the same is calculated as follows:

$$45,000 \times 40 / 100 = \text{Rs.}18,000/-$$

Total monthly income comes around is 45,000/-+Rs.18,000/- = Rs.63,000/-.

12.1.The appellants 1 to 5 are claimants and hence, the deduction for the personal expenditure is 1/5 and suitable multiplier is 15 and the total loss of income is calculated as follows:-

$$63,000/- \times 4/5 \times 12 \times 15 = \text{Rs.}90,72,000/-$$



C.M.A(MD)No.106 of 2021

WEB COPY

12.2.As per case of *National Insurance Company Vs. Pranay Sethi and others* reported in *2017 (2) TNMAC 609 (SC)*, each appellants 2 to 5 are entitled to Rs.40,000/- for love and affection. Hence, under the head of love and affection, the amount is enhanced from Rs.60,000/- to Rs.1,60,000/-.

13.In result, the appellants are entitled to enhanced compensation of Rs.69,04,000/- under the following heads:

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Re-quantified amount by this Court</i>	<i>Status</i>
1	Loss of Income	Rs.22,68,000/-	Rs.90,72,000/-	enhanced
2	Love and affection	Rs.60,000/-	Rs. 1,60,000/-	enhanced
3	Funeral Expenses	15,000/-	Rs. 15,000/-	confirmed
4	Loss of Estate	15,000/-	Rs. 15,000/-	confirmed
5	Loss of Consortium	40,000/-	Rs. 40,000/-	confirmed
	Total	Rs.23,98,000/-	Rs.93,02,000/-	Enhanced

14. Conclusion

Accordingly, this Civil Miscellaneous Appeal is Partly Allowed. The compensation awarded in M.C.O.P.No.50 of 2018, by the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Virudhunagar, at



C.M.A(MD)No.106 of 2021

Srivilliputhur, dated 11.12.2018, is hereby enhanced from Rs.23,98,000/- to Rs.93,02,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realization. The second respondent/ insurance company is directed to deposit the enhanced award amount with accrued interest and costs, less the amount already deposited, within a period of one month from the date of receipt of a copy of this judgment.

15.Apportionment of compensation:

On such deposit, the appellants/claimants are entitled to withdraw the compensation amount as per apportionment made hereunder:

S. No.	Claimant	Apportionment /Amount in Rupees
1.	S.Parminal/Wife of the deceased	Rs.35,00,000/-
2.	Minor.S.Ayisha Banu/daughter of the deceased	Rs.25,01,000/-
3.	Minor.S.Athiba/daughter of the deceased	Rs.25,01,000/-
4.	A.Habifa/Mother of the deceased	Rs.4,00,000/-
5.	K.Abdul Karim/Father of the deceased	Rs.4,00,000/-

The appellants 1, 4 and 5 are entitled to withdraw their share along with proportionate interest with costs by making necessary application



C.M.A(MD)No.106 of 2021

WEB COPY

before the Tribunal and shares of the minor daughters are to be deposited in any one of the nationalized bank in the interest bearing account and the first appellant is permitted to withdraw the interest once in six months till their attainment of majority. There shall be no order as to costs.

[P.V.J.] & [K.K.R.K.J.]
21.08.2024

NCC : Yes/No

Index : Yes/No

vsg

To

1.The Motor Accident Claims Tribunal,
The Chief Judicial Magistrate, virudhunagar,
at Srivilliputhur.

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



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C.M.A(MD)No.106 of 2021

P.VELMURUGAN.J.,
and
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C.M.A(MD)No.106 of 2021

21.08.2024