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C.M.A.No.1141 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-06-2025

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

Civil Miscellaneous Appeal No. 1141 of 2023

Mahalingam (Died)

1.Kalaiaarasai,

W/o. Mahalingam

2.Sathya,

D/o. Mahalingam

3.Mathan

S/o.Mahalingam

[All are residing at No.301, Ashokapuram,

Near K.K.S.K. Mahal

Bhavani Main Road,

Veerappan Chatram,

Erode – 638 004.

...Appellants

Versus

1. Rajamanickam

S/o. Subramaniam

Old No. 68, New Old No. 87,

Nasuvankadu Vattur

Tiruchengode Taluk, Namakkal.

2.The National Insurance Company Limited

Branch Office at No. 930, Sathy Road

Gandhipuram, Coimbatore-641 012.

...Respondents

1 / 10



C.M.A.No.1141 of 2023

WEB COPY

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 07.07.2022 in M.C.O.P.No. 65 of 2018 on the file of Motor Accident Claims Tribunal/Special Sub Court, Coimbatore.

For Appellants : Mr.MA.P.Thangavel
For Respondent-1 : Ex-parte before the Tribunal
For Respondent-2 : Mrs.R.Sreevidhya

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellants/claimants for enhancement of compensation granted by the Tribunal in the award dated 07.07.2022 made in M.C.O.P.No. 65 of 2018 on the file of Motor Accident Claims Tribunal/Special Sub Court, Coimbatore.

2. Originally, the victim in the accident viz., Mahalingam filed claim petition seeking compensation for the injuries caused to him in the accident dated 11.11.2016. During the pendency of the MCOP, the victim died



C.M.A.No.1141 of 2023

on 08.08.2021. Therefore, his legal heirs were brought on record and thereby, in M.C.O.P.No. 65 of 2018, claimants claimed a sum of Rs.30,00,000/- as compensation.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car bearing Registration No.TN-34-T-7404 belonging to the first respondent and directed the respondents 1&2 jointly or severally liable to pay a sum of Rs.9,50,407/- as compensation to the appellants.

4. Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellants/claimants contended that the deceased aged 67 years, was practising Doctor and he was also working in a private clinic as consultancy doctor and he was earning a sum of Rs.1,00,000/-. To prove the same, PW2 and PW3, who are the Officials of the private clinic were examined. But the Tribunal erroneously



C.M.A.No.1141 of 2023

fixed Rs.66,000/- per month as salary. Further, the Tribunal failed to consider the fact that due to accident, victim suffered amputation of both legs and failed to adopt proper multiplier. Further, Tribunal has fixed the loss of income only for six months, which is erroneous. He further submitted that if there is any delay in filing the appeal i.e, 153 days, interest for the said delay period could be waived. In any event, the amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. The learned Counsel appearing for the 2nd respondent/Insurance Company has raised objection stating that there is no material to prove that the deceased was earning more than Rs.1,00,000/-; as such, the Tribunal fixed Rs.63,000/- as monthly salary for the victim based on the evidence of PW2 and PW3, which requires no interference and prayed for dismissal of the Civil Miscellaneous Appeal.

7. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record.



C.M.A.No.1141 of 2023

WEB COPY

8. After completion of evidence, the claimant viz., Mahalingam died and the legal heirs of the deceased are contesting the case. Admittedly, the deceased was a doctor who is aged about 67 years at the time of accident. He was also working in a private concern as a consultant doctor and practising as “senior doctor”. He would have earned a sum of Rs.1,00,000/- as suggested by the learned Counsel for the appellants. But the Tribunal has fixed only a sum of Rs.63,000/-.

9. Considering the avocation of the victim, nature of injuries caused due to the accident and the subsequent death during the pendency of MCOP , this Court is inclined to fix the income of the deceased as Rs.80,000/- per month instead of 63,000/- fixed by the tribunal. Further, taking note of the amputation of both legs due to the accident and that the victim suffered for nearly five years, it is appropriate to fix 70% disability percentage in awarding loss of income. Taking note of the age of the deceased i.e., 67 years, “5” multiplier is applied to arrive at the compensation under the head “Loss of dependency”. Accordingly, loss of income alone is enhanced as follows:-

Rs.80,000/- X 12 X 5 X 70/100 = Rs.33,60,000/-.



The rest of the compensation awarded by the Tribunal is just, fair and reasonable and hence, the same is hereby confirmed.

10. Thus, the compensation awarded by the Tribunal is modified as follows:-

Sl. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of Income	3,78,000	33,60,000	Enhanced
2.	Medical expenses	4,46,407	4,46,407	Confirmed
3.	Attendant Charges	50,000	50,000	Confirmed
4.	Nutrition Expenses	50,000	50,000	Confirmed
5.	Transport Expenses	25,000	25,000	Confirmed
6.	For Damage to Clothes	1,000	1,000	Confirmed
	Total	9,50,407	39,32,407	29,82,000

11. The learned Counsel for the appellants/claimants has relied upon the decision in case of *P. Ramesh (Died) & Others v. P.Kaliyammal & Another* reported in *CDJ 2023 MHC-8146* in CMA.No.2181 of 2021 dated



C.M.A.No.1141 of 2023

06.04.2023 for the principle that even if there is no nexus between the injuries and the death of the deceased, when the claimants as the legal heirs of the injured deceased, they can claim for loss of estate of the injured/deceased. The learned counsel for the appellants/claimants further submitted that as held by various High Courts in various decisions, Loss of estate would include expenditure on medicines, treatment, diet, attendant charges, doctors fee, etc., including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depicted from the estate of the injured, subsequently deceased. The learned counsel, therefore, prayed for compensation under the head “Future prospects”.

12. By way of reply, the learned Counsel appearing for the second respondent/Insurance company, would submit that the appellants/claimants are not entitled to any compensation towards future prospects, since the deceased survived only for a period of nearly five years after the accident.

13. Taking note of the date of accident i.e., on 11.11.2016 and the date of death of the victim i.e., on 08.08.2021, this court is not inclined to



C.M.A.No.1141 of 2023

grant any compensation under the head “Future prospects” separately.

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- 14.** In the result, (i) this Civil Miscellaneous Appeal is partly allowed;
- (ii) compensation awarded by the Tribunal at Rs.9,50,407/- is hereby enhanced to Rs.39,32,407/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.
- (iii) The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation.
- (iv) It is made clear that the appellants/claimants are not entitled to any interest for the delay period on the enhanced award granted by this Court as per the order of this Court in M.P.No.6345 of 2023 in C.M.A.SR.No.34786 of 2023.
- (v) The 2nd respondent/Insurance company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of twelve weeks from the date of receipt of a copy of this judgment.
- (vi) On such deposit, the appellants/claimants are permitted to withdraw their respective share of the award amount on the following apportionment:-



C.M.A.No.1141 of 2023

1st claimant – 17,32,407

2nd claimant – 11,00,000

3rd claimant – 11,00,000

along with proportionate interest and costs, less the amount if any, already withdrawn.

No costs.

04.06.2025

MSM/nvsri

To

1.The Motor Accident Claims Tribunal/
Special Sub Court, Coimbatore.

2.The Section Officer, V.R. Section, High Court, Madras.



WEB COPY



C.M.A.No.1141 of 2023

T.V.THAMILSELVI, J

MSM/nvsri

CMA.No. 1141 of 2023

04.06.2025

10 / 10