



CMA.No.1990 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated 12.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.1990 of 2021

1. Valli
2 . Parameswari
3. Saraswathi
4. Saravanan ... Appellants

Vs.

1. D.Kathirvel
2. Oriental Insurance Company Limited,
Oriental House, 2nd floor, Old No.115,
New No.216, Prakasam Salai,
Broadway, Chennai 600 108. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to enhance the award amount made in MACTOP No.1835 of 2018 dated 06.11.2019 on the file of the Special Subordinate Court No.2, Motor Accident Claims Tribunal, Small Causes Court, Chennai.

For appellants: Ms.M.Malar

For Respondent: Mr.J.Chandran, second respondent

JUDGMENT



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Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal.

2. It is not in dispute that the son of the first claimant, father of the claimants 2 to 4 namely Munusamy died in a road accident that had taken place on 08.02.2018. It is the case of the claimants that on 08.02.2018, the deceased had crossed road (Annasalai) from west to east, near Dheeran Chinnamalai Statue, Guindy, Chennai. At that point of time, a load van belonging to the first respondent, insured with the second respondent came from southern direction in a rash and negligent manner and hit the deceased. As a result of accident, he died on the spot. The claimants filed a claim petition seeking compensation of Rs.40,00,000/-. The first respondent, owner of the offending vehicle remained exparte and the claim petition was resisted only by the second respondent/ insurance company by denying the manner of accident as averred in the claim petition. The insurance company also denied the age, income, avocation etc. of the deceased.

3. The Tribunal based on the evidence available on record, came



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to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the load van belonging to the first respondent and the compensation payable to the claimants was quantified at Rs.19,97,800/-. Not satisfied with the quantum of compensation, the claimants have come before this court by filing the present appeal.

4. The learned counsel for the appellants and the second respondent have not advanced any arguments on the questions of negligence as well as the liability and hence, the facts necessary for deciding those questions are not discussed in the appeal.

5. The learned counsel for the appellants would submit that the accident had occurred in the year 2018, however the Tribunal fixed very meager amount of Rs.13,500/- as notional income and the same requires enhancement. He further submits that the deduction of 50% made towards personal expenses of the deceased is not tenable in law.

6. The learned counsel for the second respondent/ insurance



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company submits that the claimants have miserably failed to produce any documentary evidence to prove the income of the deceased and hence, the Tribunal was justified in fixing notional income at Rs.13,500/- The learned counsel, by relying on the decision of the Hon'ble Apex Court in ***Sarala Verma case*** submits that the deduction of 50% made by the Tribunal is justified in accordance with law.

7. In the claim petition, it was averred by the claimants that the deceased was self employed and was earning a sum of Rs.18,000/- per month. In order to prove the income, the claimants have not produced any evidence. Even if there is no documentary evidence, considering the facts and circumstances of the case and year of accident, this court can fix notional income. In the case on hand, the accident had occurred in the year 2018 and taking into consideration the cost of living, a sum of Rs.16,500/- p.m. is fixed as notional income of the deceased. As per postmortem certificate Ex.P2, the Tribunal fixed the age of the deceased as 27 years, Therefore, as per the law laid down by the Hon'ble Supreme in ***National Insurance Company Limited Vs. Pranay Sethi and others reported in AIR 2017 SC 5157(Special Leave***



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Petition (Civil) No.25590 of 2014 dated 31.10.2017) the claimants are entitled to 40% enhancement towards future prospects. and the applicable multiplier is 17. The first claimant is mother of the deceased, second claimant is married sister and the 3rd and 4th claimants are unmarried sister and brother of the deceased. However, having regard to the fact that the deceased was a bachelor at the time of accident, the Tribunal was justified in deducting 50% towards personal expenses of the deceased. Therefore, the claimants are entitled to Rs.23,56,200/- (16,500 x 1.40 x 12 x 17 x 1 /2) towards loss of dependency.

8. The amount awarded by the Tribunal under the Head loss of estate, Funeral expenses, loss of parental consortium to the first claimant are in accordance with the law laid by the Apex Court in **Pranay Sethi Case** and hence, they are confirmed.

9. The Tribunal has not awarded any amount to the claimants 2 to 4 towards loss of love and affection. Hence a sum of Rs.40,000/- each is awarded to the claimants 2 to 5 towards loss of love and



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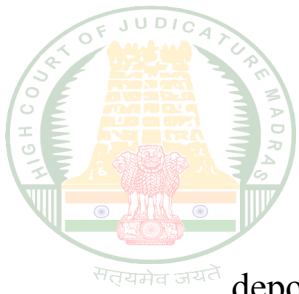
affection.

10. Accordingly, the compensation awarded by the Tribunal is revised as under:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	19,27,800	23,56,200	enhanced
2.	Loss of parental consortium to first claimant	40,000	40,000	confirmed
3.	Loss of love affection to claimants 2 to 5	--	1,20,000	granted
5.	Loss of estate	15,000	15,000	confirmed
6.	Funeral expenses	15,000	15,000	confirmed
	Total	19,97,800	25,46,200	enhanced by 5,48,400

11. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.19,97,800/- is hereby enhanced to **Rs.25,46,200/-** together with interest at 7.5% per annum from the date of petition till the date of deposit. In view of order passed in CMP No.9702 of 2021, the petitioner is directed to pay applicable additional court fee.

12. The second respondent/insurance company is directed to



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deposit the compensation amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment. On such deposit, the claimants shall be permitted to withdraw the compensation amount along with interest and costs, less the amount if any, already withdrawn, as per the apportionment made by the Tribunal, by making formal application before the Tribunal.

There shall be no order as to costs.

12.03.2025

Index : Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
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To

1. Special Subordinate Judge-II
Court of Small Causes, Chennai.
2. The Section Officer,
V.R.Section, Madras High Court.



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S.SOUNTAR, J.

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