



WEB COPY



CMA No. 766 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17-02-2025**

CORAM

THE HONOURABLE MR JUSTICE R. SURESH KUMAR

AND

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

CMA No.766 of 2022

- 1.G.Karpakam, W/o Late Gobi
- 2.Minor G.Hari Prabhu, S/o Late Gobi
- 3.Minor G.Harini, D/o Late Gobi
(Minors represented by Guardian and
next friend Mother G.Karpakam)
- 4.P.Jamuna
- 5.S.Perumal

... Appellants

-Vs-

1. G.Narasimhamurthy
2. M/s.IFFCO Tokyo General Insurance Co., Ltd
KSCMF Building, 3rd Floor, Block No.8
Cunningham Road, Bangalore – 560 052

... Respondents

Prayer: Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act for enhancement of the compensation in the judgment and decree dated 08.06.2017 made in MCOP No.475 of 2013 on the file of the Motor Accidents Claims Tribunal / Principal District Court at Namakkal.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Mr.B.Siva Kollappan – for R2
R1 - Exparte



CMA No. 766 of 2022

J U D G M E N T

(Judgment of the Court was delivered by **R.Suresh Kumar J.**)

WEB COPY

This Civil Miscellaneous Appeal has arisen out of the award passed by the Motor Accidents Claims Tribunal / Principal District Court, Namakkal dated 08.06.2017 made in M.C.O.P.No.475 of 2013.

2. Due to the motor vehicle accident that happened on 08.10.2012, one P.Gobi died. The five dependents of the deceased ie., Wife, two children and parents have joined together and filed the said M.C.O.P., claiming compensation of Rs.10,00,000/-. The Tribunal awarded a compensation of Rs.8,22,000/- through the impugned award, where the monthly income of the deceased was fixed only at Rs.6,000/- per month and under other heads, only a minimum amount has been awarded. Therefore, aggrieved over the same the dependents ie., the claimants have filed this Civil Miscellaneous Appeal, where they sought for enhanced compensation of Rs.35,00,000/-.

3. Heard Mr.Ma.Pa.Thangavel, learned counsel for the appellants who would point out that insofar as the avocation of the deceased is concerned, he was a centering contractor and out of his contract work, he was earning more than Rs.15,000/- per month. In this regard, since he is an employer taking the contract, he could not file any documents to establish that he was earning not less than Rs.15,000/- per month. However, the Tribunal in view of the fact that there has

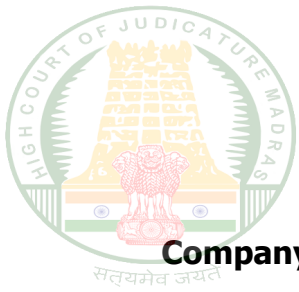


CMA No. 766 of 2022

been no documents filed in support of the claim of the claimants with regard to the earning of the deceased, had fixed a sum of Rs.6,000/- only as monthly income of the deceased and accordingly, the Tribunal, by applying the multiplier 15 has fixed the award amount for loss of dependency only to the extent of Rs.8,10,000/-. In other heads also, the Tribunal has allowed Rs.3,000/- for loss of estate, Rs.5,000/- for funeral expenses, Rs.2,000/- for love and affection and Rs.2,000/- for transportation. Therefore, a total sum of Rs.8,22,000/- has been awarded.

4. Learned counsel for the appellants has submitted that, insofar as the fixation of monthly earning as an employer by way of self estimation, the evidence of the claimants may also be taken into account and in this context, even though direct documents had not been filed on behalf of the claimants with regard to the monthly earning of the deceased, the reasonable self estimation made on behalf of the claimants must be taken into account.

5. In support of his contention, the learned counsel has relied upon a decision of the Hon'ble Supreme Court reported in **2017 (1) TNMAC 598 (SC) (M.Shivakumar -vs- The Managing Director, BMTC)**. With regard to the compensation awarded under various other heads as stated supra and omitting to award any amount towards consortium for wife as well as the parents, the learned counsel relied upon a decision of the Hon'ble Supreme Court in **2021 SCC Online 967 (N.Jayasree and Others -vs- Cholamandalam MS General Insurance**



CMA No. 766 of 2022

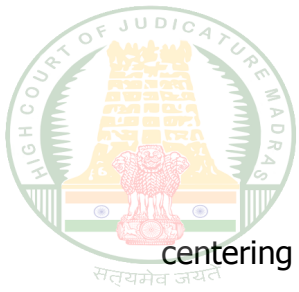
Company Ltd.,). He also relied upon the judgment of the Hon'ble Supreme Court

in National Insurance Company Limited -vs- Pranay Sethi and Others (2017) 16 S.C.C. 680.

6. We have also heard Mr.B.Siva Kollappan, learned counsel appearing for the second respondent Insurance Company, who would submit that with regard to the claim of the monthly earning of the deceased is concerned, since absolutely no documents have been filed to prove or establish such a claim, the compensation made by the Tribunal to the extent of Rs.6,000/- is reasonable, based on which, by applying the correct multiplier, after deducting 1/4th as personal expenses of the deceased, the amount of Rs.8,10,000/- has been awarded by the Tribunal. He would also submit that even under the other heads, reasonable amounts have been awarded for loss of love and affection, funeral expenses and transportation as well as loss of estate. Learned counsel would also contend that the award amount does not require any interference at the hands of this Court.

7. We have considered the rival submissions of the learned counsel for both sides and have perused the materials placed before this Court.

8. Insofar as the fixation of the earning of the deceased is concerned, though no documents directly had been filed before the Tribunal to establish the claim made on behalf of the claimants, since he was self-employed and was undertaking



CMA No. 766 of 2022

centering contract work, we can easily presume that a reasonable sum would have

been earned by the deceased. In this context, the judgment in **M.Shivakumar**

-vs- The Managing Director, BMTC (2017 (1) TNMAC 598 (SC)) cited supra

can be taken into account, where the Hon'ble Supreme Court has held as follows:

“ 4. According to the Tribunal, though the appellant contended that he was earning around Rs.15,000/- to Rs.16,500/-, in the absence of any other evidence on record, it is difficult to accept the estimate made by the appellant. However, having regard to the age of the appellant as around 45 years and the "nature of his work", as painter the Tribunal assessed his monthly income to Rs.5,500/-.

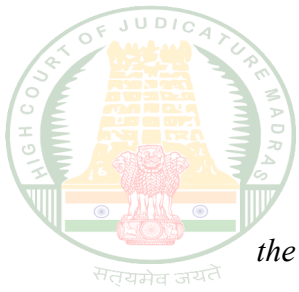
5. It is a case where the accident took place on 16.8.2013.

6. In the High Court, taking note of the fact that there is no dispute regarding his age and avocation, the income was assessed at Rs.6,500/-.

7. No doubt, there was no evidence available with regard to the income of the appellant but there is no dispute on the fact that he was a painter by profession. The accident happened in the year 2013 when he was living in Bangalore, Karnataka.

8. For a casual worker, who goes from house to house and place to place doing his painting work it is difficult to get any evidence, since there is no employer. He does his daily work, sometimes piece rated work as well. That is why he made a moderate self estimation of his income to Rs.15,000/- to Rs.16,500/-.

9. In the absence of any serious dispute on the part of the respondent on the avocation and income, we are of the view that the Tribunal and for that matter the High Court should have accepted the evidence of the appellant. Therefore, we assess his monthly income as Rs.15,000/- and after deducting one third towards his personal expenses,



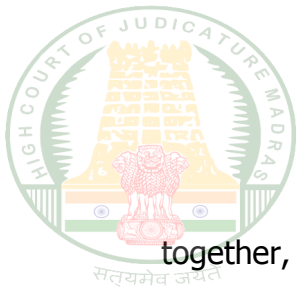
CMA No. 766 of 2022

the income will be assessed for the purpose of computation of compensation as Rs.10,000/- per month. The income is substituted as Rs.10,000/- in the place of Rs.6,500/-, as assessed by the High Court. The compensation will carry interest at the rate of 9% per annum from the date of the claim petition before the Tribunal. Rest of the award is maintained.”

9. In the said case, where the accident took place in the year 2013, the Hon'ble Supreme Court has fixed a sum of Rs.15,000/- as monthly income and after deducting 1/3rd for personal expenses, Rs.10,000/- was taken into account for computation of compensation instead of Rs.6,500/- taken by the High Court, which in fact was Rs.1000/- above what has been fixed by the Tribunal in that case.

10. Since that could be the basis as to how self determination of the income of the deceased on the basis of the evidence of the claimants has to be made, if that principle is applied to the facts of the present case, we do feel that a sum of Rs.6,000/- fixed by the Tribunal as monthly income of the deceased is far low and therefore, we feel that since the accident took place in the year 2012, if not Rs.15,000/- at least Rs.12,000/- would be a reasonable fixation. Therefore, we take it that the deceased would have earned a sum of Rs.12,000/- per month at the relevant point of time.

11. If the monthly earning is fixed at Rs.12,000/-, his future prospects as per the decision of the Hon'ble Supreme Court can be fixed at 40% ie., Rs.4,800/-. Put



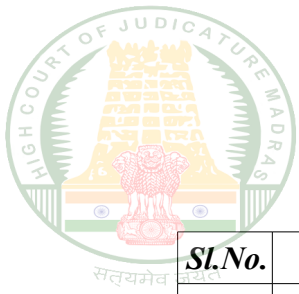
CMA No. 766 of 2022

together, a sum of Rs.16,800/- can be taken into account for the purpose of computation of compensation, by applying the multiplier of 15, which is the correct multiplier depending upon the age of the deceased as he was 39 years at the time of accident.

12. There are totally five dependents. When the dependents are 4 to 6 members, deduction shall have to be made at $1/4^{\text{th}}$ from the income of the deceased. Accordingly, $\text{Rs.}16,800 \times 1/4 = \text{Rs.}4,200/-$ and $\text{Rs.}16,800 - \text{Rs.}4,200/-$ comes to $\text{Rs.}12,600/-$. Taking $\text{Rs.}12,600/-$ as the monthly income, the loss of dependency would work out to a total sum of $\text{Rs.}22,68,000/-$ ($\text{Rs.}12,600 \times 12 \times 15$).

13. In respect of other heads, based on the judgment in **Pranay Sethi's case** and other decisions, the following amounts are fixed. $\text{Rs.} 15,000/-$ towards funeral expenses, $\text{Rs.}40,000/-$ each for loss of love and affection for two children, $\text{Rs.}40,000/-$ for loss of consortium to the wife, $\text{Rs.}40,000/-$ each for both the parents of the deceased. We do not propose to make any enhancement under the head Transportation. Accordingly, the enhanced compensation is as follows:

Sl.No.	Heads	Compensation (In Rs.)
1.	Loss of Dependency (Monthly Income : $\text{Rs.}12,000 + \text{Future Prospects @ } 40\% \text{ ie., Rs.}4,800/-$ = $\text{Rs.}16,800$ Less : $1/4$ towards personal expenses = $\text{Rs.} 4,200$ Monthly income after deductions = $\text{Rs.}12,600$ Compensation : $\text{Rs.}12,600 \times 12 \times 15$	22,68,000

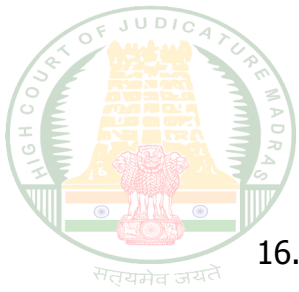


CMA No. 766 of 2022

<i>Sl.No.</i>	<i>Heads</i>	<i>Compensation (In Rs.)</i>
2.	Loss of Estate	15,000
3.	Funeral Expenses	15,000
4.	Loss of love and affection (2 children @ Rs.40,000/- each)	80,000
5.	Loss of Consortium to Wife	40,000
6.	Loss of Consortium to Parents (@ Rs.40,000/- each)	80,000
7.	Transportation	2,000
	Total Compensation	25,00,000

14. Therefore, the aforesaid modified enhanced compensation under various heads would be the suitable compensation payable to the claimants. Hence, the impugned award dated 08.06.2017 made in MCOP No.475 of 2013 on the file of the Motor Accidents Claims Tribunal / Principal District Court at Namakkal is modified to the aforesaid effect and the compensation is enhanced to the said amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) from Rs.8,22,000/- already awarded by the Tribunal.

15. With respect to the direction passed by the Tribunal for pay and recovery by the insurance company, we are not inclined to interfere with the same and therefore, even this enhanced amount of compensation shall be paid by the respondent Insurance Company and it is open to them to recover the same from the owner of the vehicle.



CMA No. 766 of 2022

16. It is stated that the entire award amount as per the impugned award has been deposited by the insurance company. The remaining amount of Rs.16,78,000/- (Rs.25,00,000 – Rs.8,22,000) as per the modified compensation awarded now in this judgment shall be deposited by the insurance company within a period of two months from the date of receipt of a copy of this judgment with the same rate of interest as allowed by the Tribunal. However, the claimants are not entitled to claim interest for the delay period in preferring this appeal. The terms of apportionment shall also be same as per the award passed by the Tribunal. On deposit of the remaining amount of compensation as per the enhanced compensation, the claimants are entitled to withdraw the same as per the apportionment specified in the award passed by the Tribunal.

17. With the above observations and directions, the Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal is modified to the above extent. No costs. The Claimants shall pay the necessary court fee for the enhanced compensation amount.

(R.SURESH KUMAR, J.) (A.D.MARIA CLETE, J.)
17-02-2025

Index : Yes/No

Neutral Citation : Yes/No

KST



WEB COPY



CMA No. 766 of 2022

R.SURESH KUMAR, J.

AND

A.D.MARIA CLETE, J.

KST

To

The Motor Accidents Claims Tribunal /
Principal District Court, Namakkal.

C.M.A.No.766 of 2022

17.02.2025