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CMA.NO.2016 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE DR. JUSTICE A.D.MARIA CLETE

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1. Mrs.V.Kalaivani
W/o. Late Venkatachalam,
2. Miss. V.Thejasri (Minor) (aged 6 years)
Rep. By Natural Guardian Mother V.Kalaivani (1st petitioner)
D/o, Late. Venkatachalam,

All are residing at No.7/122,
Vanniar Street, Gajjainaickenpatty,
Salem – 636 201.
Mrs. Nallammal (Since Died)
W/o. Late. Rajee.

... Appellants /
Petitioners

Vs.

1. M. Kannan,
No.1/108, Pudur, U. Maramangalam,
Reddipatty, Omalur Taluk, Salem.
2. IFFCO TOKIO General Insurance Company Limited
Plot No.3, Sector – 29, Gurgaon – 12.

... Respondents /
Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated 01.06.2022 made in M.C.O.P.No.616 of 2019 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Salem.



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For Appellant : M/s.V.Mythili
For R2 : Mr.B.Sivalollappan
For R1 : Exparte

J U D G M E N T

(Judgment of the Court was delivered by Dr.A.D.MARIA CLETE, J.)

This appeal is directed against the award passed by the Motor Accidents Claims Tribunal, Salem, in MCOP No. 616 of 2019, dated 01.06.2022. The appellants, being the wife and minor daughter of the deceased Venkatachalam, contend that the Tribunal awarded an inadequate sum as compensation for his untimely demise in a motor accident on 24.07.2017.

2. The deceased, a 35-year-old school teacher at Saraswathi Matriculation School, Mecheri, was earning Rs. 30,000/- per month. However, on perusal of Ex. P4 (salary certificate), it is evident that the Tribunal erroneously fixed the deceased's monthly income at a notional amount of Rs. 10,000/-, ignoring his actual earnings.



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3. While the full salary of Rs. 30,000/- is proven by Ex. P4, in the absence of corroborative employer testimony, the Court may exercise prudence and make a reasonable deduction to account for any inconsistencies or potential variations in earnings. Even with such deductions, a fair and reasonable assessment of income cannot go below Rs.20,000/- per month, Additionally, applying 40% towards future prospects, which amounts to Rs.8,000/-, the total monthly income is fixed at Rs.28,000/-.

4. The Tribunal further applied a multiplier of 15, assuming that the deceased was more than 35 years old. As per Ex P2 - Postmortem certificate the age of the deceased is mentioned as about 35 years. When the postmortem certificate states "about 35 years," it generally means that the estimated age is approximately 35, with a possible variation of one or two years. "About" signifies an approximation, not a definitive statement that the person had crossed 35. In case of ambiguity, the benefit of doubt should favor the claimants to ensure fair compensation. Legal precedents suggest that when age is unclear, the lower bound should be applied to avoid undue reduction in compensation. Therefore, in this case, the age should be fixed as 35 years and not 36. As per *Sarla Verma v. DTC [(2009) 6 SCC 121]*, the



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correct multiplier for a 35-year-old deceased is 16. The Tribunal's application of a multiplier of 15 was incorrect, and the correct multiplier of 16 must be applied in determining the compensation.

5. As regards other heads, the loss of affection shall prevail only for the child since the wife has been awarded compensation under the head loss of consortium and the mother of the deceased is no more.

6. The revised quantum of compensation shall be based on these modifications as follows:

S.No.	Heads	Amount
1	Loss of Income (Rs.28,000 x 12 x 16) 5,376,000 – 1/3 (17,92,000)	Rs.35,84,000/-
2	Loss of love and affection for only second appellant	Rs.20,000/-
3	Loss of consortium	Rs.40,000/-
4	Funeral Expenses	Rs.15,000/-
	Total	Rs.36,59,000/-

7. In fine, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal viz. Rs.11,25,000/- is hereby enhanced to Rs.36,59,000/- (Rupees Thirty Six Lakhs and Fifty Nine Thousand only). The Second respondent / Insurance Company is directed to



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deposit the enhanced compensation along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount if any already deposited to the credit of M.C.O.P.No.616 of 2019 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Salem, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellants are entitled to withdraw the same by filing proper application. The apportionment made by the Tribunal is unaltered. The share amount of the minor second petitioner shall be invested in any one of the Nationalised Banks, until she attain majority and the first petitioner being her mother and natural guardian is permitted to withdraw the interest accrued on the share of the minor once in three months for the maintenance and welfare of the minor. The appellants are directed to pay necessary Court fee for the enhanced compensation, if any. No costs.

[R.S.K., J.] [A.D.M.C., J.]
20.02.2025

Index : Yes / No
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Speaking Order : Yes / No
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To
The Motor Accidents Claims Tribunal,
Special District Judge, Salem.

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