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CMA.No.161 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 06.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.161 of 2023

1. Reshma
- 2 . Barakath
- 3 . Fathima

... Appellants

Vs.

1. A.Issac Basha

2. A.Lashreen

3. The Branch Manager,
ICICI Lombard General Insurance Co. Ltd.,
second floor, SVR Complex, Hosur Main Road,
Bangalore, Karnatak 560 068.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to enhance the compensation amount made in MCOP No.297 of 2020 dated 12.03.2021 on the file of the Special District Court, Motor Accident Claims Tribunal, Krishnagiri.

For appellants : Mr.S.P.Yuaraj

For Respondents : Mr.B.Sivakolappan for third respondent

No appearance for R1 and R2



CMA.No.161 of 2023

WEB COPY

JUDGMENT

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have come before this court by filing the present appeal.

2. It is the case of the claimants that the husband of the first claimant and son of the second and third claimants died in a road accident that had occurred on 17.09.2019. It is the further case of the claimants that the deceased was travelling as a pillion rider in a motorcycle driven by one Mubarak @ Rahmathula, who were proceeding in a National High way from Dharmapuri to Krishnagiri by following the traffic rules. At that time, the driver of the Maruthi Suzuki K10 car, the first respondent, came in the opposite direction and suddenly turned the vehicle towards left side, without giving any signal or indication and in view of the same, the left hand front head light portion of the car dashed against the motor cycle. Due to the said impact, the victim fell on the road and the driver of the first respondent car lost the control and ran over him. Thereafter, the victim died in the hospital. Therefore, the claimants filed a claim petition before the



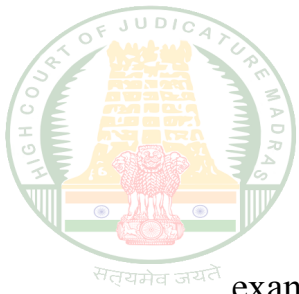
CMA.No.161 of 2023

WEB COPY

Tribunal seeking compensation of Rs.50,00,000/-. The respondents 1 and 2, who are driver and owner of the Maruthi Suzuki Car filed counter, opposing the claim petition. According to them, an unknown two wheeler also involved in the accident and only the unknown vehicle dashed against the two wheeler in which the deceased was travelling as a pillion rider, as a result of impact, the deceased was thrown away from the two wheeler and had fallen on the road. The first respondent, who had driven the car, immediately stopped the vehicle and the deceased sustained injuries only due to the impact created by the unknown vehicle. The first and second respondents also denied the age and income of the deceased.

3. The third respondent/ insurance company remained exparte before the Tribunal.

4. In order to prove the negligence, the first claimant was examined as PW1 and one eyewitness was examined as PW2 and on the side of the claimants 13 documents were marked as Ex.P1 to Ex.P13. On the side of the first respondent, the driver of the car was



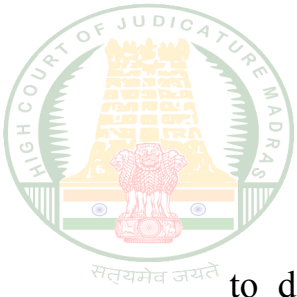
CMA.No.161 of 2023

WEB COPY

examined as RW1 and three documents were marked as Ex.R1 to Ex.R3. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred only due to the negligence on the part of the first respondent, who had driven the car and quantified the amount payable to the claimants as Rs.18,66,800/-. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal.

5. The learned counsel for the appellants/claimants would submit that the accident had occurred in the year 2019, however the Tribunal fixed notional income only at Rs.9,000/- per month and the same requires enhancement.

6. The learned counsel for the third respondent / insurance company would submit that the third respondent filed application before the Tribunal to set aside the exparte award passed against the insurance company and hence, the insurance company shall be given an opportunity to contest the claim petition filed by the claimants on merits and prayed that the matter may be remanded back to the Tribunal



CMA.No.161 of 2023

WEB COPY

to decide the matter afresh by giving opportunity to the insurance company.

7. In reply to the same, the learned counsel for the appellants would submit that the I.A.No.3 of 2021 filed by the third respondent to set aside the exparte award was dismissed by the Tribunal on 15.10.2024.

8. The insurance company, for the reasons best known to them failed to contest the case before the Tribunal and latter filed an application to set aside the exparte order and the same was dismissed. In such circumstances, the request made by the learned counsel for the third respondent that an opportunity shall be given to the insurance company to contest the claim petition on merits by leading evidence is not acceptable before this court and hence, this court is not inclined to entertain the said plea made by the counsel for the insurance company.

9. The learned counsel for the insurance company further submits that the claimants have not produced any documents to prove the



CMA.No.161 of 2023

WEB COPY

income of the deceased and hence, the Tribunal was justified in fixing notional income at Rs.9,000/- per month.

10. In the claim petition, it was averred by the claimants that the deceased was engaged in preparation and marketing of Aachi Masala and other masala products and he was earning a sum of Rs.20,000/- per month. However, they have not produced any documentary evidence to prove the avocation and income of the deceased. Therefore, taking into consideration the facts and circumstances of the case and also the year of accident, this court can fix notional income. Having regard to the date of accident (2019) and also the prevailing cost of living, this court feels that it would be appropriate to fix notional income at Rs.16,500/- per month. As per Ex.P2 postmortem certificate, at the time of accident, the deceased was aged 26 years. Hence, 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 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. There were three persons depending



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on the income of the deceased at the time of accident and hence, 1/3 should be deducted towards his personal expenses. In view of the same, loss of dependency is fixed at Rs.31,41,600/- (16,500 x 1.40 x 12 x 17 x 2/3).

11. As far as the other compensation awarded under the heads loss of consortium to the claimants, loss of estate, funeral expenses are concerned, they are in accordance with the decision of the Apex Court in *Pranay Sethi Case*. Hence, they are confirmed. The amount awarded under the head medical expenses is based on the evidence available on record and hence, the same is confirmed.

12 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	17,13,600	31,41,600	enhanced
2.	Loss of consortium to the claimants	1,20,000	1,20,000	confirmed
3.	Medical Bill	3,200	3,200	confirmed



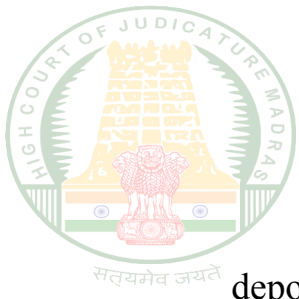
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5.	Loss of estate	15,000	15,000	confirmed
6.	Funeral expenses	15,000	15,000	confirmed
	Total	18,66,800	32,94,800	enhanced by 14,28,000

13. With the above modifications, this Civil Miscellaneous **Appeal is allowed** and the compensation awarded by the Tribunal at Rs.18,66,800/- is hereby enhanced to **Rs.32,94,800/-** together with interest at 7.5% per annum (*excluding the delay period interest for 99 days in respect of enhanced amount as per order passed in CMP No.16032 of 2022*)) from the date of petition till the date of deposit. The appellants are directed to pay applicable court fee on the above said enhanced compensation.

14. From the above compensation now determined by this court, the first claimant/wife is entitled to Rs.22,94,800/- and the second claimant/father is entitled to Rs.4,00,000/- and third claimant/ mother is entitled to Rs.6,00,000/-.

15. The third respondent insurance company is directed to



CMA.No.161 of 2023

WEB COPY

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 their respective compensation amount along with interest and costs, less the amount if any, already withdrawn by making formal application before the Tribunal. No costs.

06.03.2025

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

1. The Special District Court,
Motor Accident Claims Tribunal,
Krishnagiri.
2. The Section Officer,
V.R.Section, Madras High Court.



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CMA.No.161 of 2023

S.SOUNTHAR, J.

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CMA No.161 of 2023

06.03.2025