



WEB COPY

CMA NO.2917 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 06 / 12 / 2024

JUDGMENT DELIVERED ON : 07 / 01 / 2025

CORAM :

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.2917 OF 2023

1. Asha
2. Bharathram
3. Nithya

... Appellants /
Petitioners

Vs.

1. K.R.Monishraj
2. Reliance General Insurance Co.,Ltd.,
Plot No.6, 6th Floor, Haddows Road,
Nungambakkam, Chennai 600 034.

... 1st Respondent /
1st Respondent
... 2nd Respondent /
2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to enhance the compensation awarded vide Award dated June 17, 2022 made in M.C.O.P.No.4427 of 2019 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellant : Mr.F.Terry Chella Raja



WEB COPY



CMA NO.2917 OF 2023

For Respondent -1 : No Appearance

For Respondent-2 : Mr.P.Suresh Srinivasan

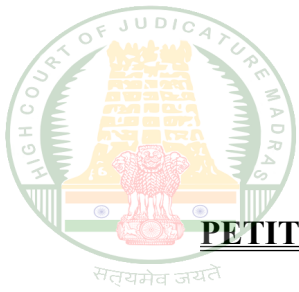
JUDGMENT

R.SAKTHIVEL, J.

Feeling aggrieved by the compensation awarded by 'the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai' ('Tribunal' for short) vide its order of Award dated June 17, 2022, made in M.C.O.P.No.4427 of 2019, the petitioners have preferred this Civil Miscellaneous Appeal praying to enhance the award of compensation.

2. By the impugned Award, the Tribunal awarded a sum of Rs.19,80,000/- as compensation along with interest at 7.5% per annum from the date of filing of the claim petition till the date of payment, to the appellants/petitioners as against their total claim of Rs.75,00,000/-.

3. For the sake of convenience, the parties in this appeal will hereinafter be referred to as per their array in the Claim Petition before the Tribunal.



CMA NO.2917 OF 2023

PETITIONERS' CASE:

WEB COPY

4. The first petitioner is the wife of the deceased – Ganapathy KGS Mani, and the second and third petitioners are his son and daughter respectively. On the fateful day viz., May 12, 2019, at about 07.30 p.m., while the deceased was walking opposite to Sangeetha Hotel, Rajiv Gandhi Salai, Thuriapakkam, a motorcycle bearing Registration No.TN-85-C-7084 belonging to the first respondent and insured with the second respondent, came in a rash and negligent manner, and hit against the deceased, as a result of which, the deceased sustained multiple grievous injuries all over his body and later passed away. The deceased was aged about 70 years at the time of accident and was working as an 'EB Consultant (Private)' and earning Rs.13,72,869/- per annum. The petitioners filed Claim Petition claiming Rs.75,00,000/- as compensation from the respondents.

FIRST RESPONDENT'S CASE

5. The first respondent filed a counter stating that the accident had occurred only due to the fault of the deceased. There was no negligence on the part of the first respondent's motorcycle and he is not liable to pay any compensation to the petitioners 1 to 3. Further, the first



CMA NO.2917 OF 2023

respondent denied the age and occupation of the deceased. He stated that the motorcycle bearing Registration No.TN 85-C-7084 was insured with the second respondent under the Policy No.121221823120091895 which was in force on the date of accident. Further, the compensation sought for is excessive. Accordingly, he prayed for dismissal of the Claim Petition.

SECOND RESPONDENT'S CASE

6. The second respondent – Insurance Company filed counter contending that the age, occupation, dependency, and income of the deceased are to be proved by the petitioners. The second respondent denied the driving licence of the rider of the first respondent's motorcycle, validity of the first respondent's motorcycle as well as its insurance coverage at the time of accident. Further, the compensation claimed is excessive. Hence, the second respondent prayed to dismiss the original petition.

TRIBUNAL

7. The Tribunal framed the following points for consideration:

- 1) *Whether the accident has occurred due to rash and negligent driving of the first respondent vehicle by its*



WEB COPY



CMA NO.2917 OF 2023

rider?

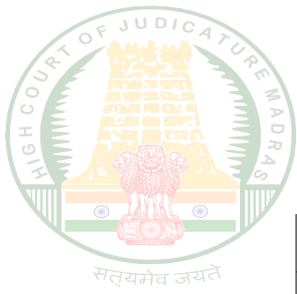
2) Whether the respondents 1 and 2 are liable to pay compensation?

3) Whether the petitioners are entitled for compensation as claimed in the petition? If so, what is the quantum of compensation?

7.1. Before the Tribunal, the third petitioner, daughter of the deceased, examined herself as P.W.1, one G.Raman, eyewitness to the accident, was examined as P.W.2 and 17 documents were marked as Exs-P.1 to P.17. The respondents did not let in any oral or documentary evidence.

7.2. The Motor Accident Claims Tribunal after analysing the oral and documentary evidence, came to the conclusion that the accident occurred due to the rash and negligent riding of the first respondent's motorcycle and that the said motorcycle's insurance policy was in force at the time of accident. Accordingly, the Tribunal held that the respondents are jointly and severally liable to pay compensation to the petitioners. The breakup of the amount awarded by the Tribunal is as tabulated below:-

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1	Loss of Income/Dependency	Rs.18,70,000.00



WEB COPY



CMA NO.2917 OF 2023

	(Rs.7,48,000 x 5 x 1/2)	
2	Loss of Estate	Rs.15,000.00
3	Loss of Consortium Rs.40,000 (first petitioner/wife)	Rs.40,000.00
4	Loss of Consortium (Rs.20,000/- (each) x 2 (petitioners 2 and 3)	Rs.40,000.00
5	Funeral expenses	Rs.15,000.00
Total		Rs.19,80,000.00

8. Not satisfied with the compensation awarded by the Tribunal, the petitioners have filed this Civil Miscellaneous Appeal praying to enhance the compensation.

ARGUMENTS

9. The learned Counsel for the appellants / petitioners submitted that Ex-P.5 to Ex-P.8 are the copies of Income Tax Return Acknowledgements for the Assessment years 2016 - 2020 respectively. The Tribunal had taken into consideration the Income Tax Return for the Assessment year 2018-2019 marked as Ex.P.7 for computation of the income of the deceased. The Tribunal failed to take into consideration a sum of Rs.4,29,116/- per annum earned 'from other sources' (as evident from Ex-P.7) by the deceased while computing his income. The Tribunal failed to note the fact that the avocation and income of the deceased were



CMA NO.2917 OF 2023

proved through Ex-P.5 to Ex-P.8. He would further submit that the

Tribunal has wrongly deducted 50% of the income towards the personal expenses of the deceased. The Tribunal ought to have deducted only 1/3rd towards his personal expenses as per the decision of Hon'ble Supreme Court in *Sarla Verma Vs. Delhi Transport Corporation*, reported in *(2009) 6 SCC 121*. Further, the Tribunal is not right in its finding that the appellants are standing on their own legs and they are not wholly depended upon the income of the deceased aged about 70 years. The Tribunal ought to have awarded proper compensation under the head “ loss of dependency”, “loss of estate”, “loss of consortium” and “funeral expenses” by following the various principles laid down by the Hon'ble Supreme Court. Accordingly, he prayed for enhancement of compensation awarded by the Tribunal .

10. Per contra, the learned Counsel for the second respondent - Insurance Company submitted that the petitioners did not produce any documents to substantiate their averment that the deceased was earning a sum of Rs.4,29,116/- per annum as income from Other Sources. In the absence of proof, the said amount cannot be taken into consideration while calculating compensation. Further, the Tribunal erred in awarding the



CMA NO.2917 OF 2023

compensation under the head 'loss of dependency' by ignoring the fact that the petitioners 2 & 3 were married son and daughter, and they were not dependants of the deceased. In view of these circumstances, he would pray to dismiss the Civil Miscellaneous Appeal.

DISCUSSION:

11. This Court has considered the arguments advanced on either side and has also perused the evidence on record as well as the impugned Award passed by the Tribunal.

12. From the materials available on record, it is seen that the Tribunal had come to the conclusion that the accident occurred only due to the rash and negligent riding of the rider of the first respondent's motorcycle who dashed against the deceased, by placing reliance on the evidence of P.W.2 (ocular witness) coupled with the evidence of P.W.1 and the First Information Report (FIR). The respondents did not adduce any contra evidence to shake the evidence of P.W.1 and P.W.2, whose deposition corroborate the petitioners' case unequivocally. Hence, there is no reason to interfere with the findings of the Tribunal with regard to negligence.



CMA NO.2917 OF 2023

13. According to the petitioners, the deceased was an 'EB Consultant (Private)' and earning a sum of Rs.13,72,869/- per annum. To prove the same, the petitioners marked Ex-P.5 to Ex-P.8 which are Income Tax Return Acknowledgements for the Assessment Years 2016-2017, 2017-2018, 2018-2019 and 2019-2020 respectively. In these exhibits, the gross total annual income showed are ranging from Rs.9,72,634/- to Rs.14,82,376/- as tabulated hereunder:

<i>Sl.No.</i>	<i>Exhibit No.</i>	<i>Assessment year</i>	<i>Gross Total Income</i>
1	Ex.P.5	2016-2017	Rs.13,19,091/-
2	Ex.P.6	2017-2018	Rs.14,82,376/-
3	Ex.P.7	2018-2019	Rs.13,72,869/-
4	Ex.P.8	2019-2020	Rs.9,72,634/-

14. Since the accident occurred during the assessment year 2019-2020, the Tribunal took the Income Tax Return for the previous assessment year viz., 2018 – 2019 (Ex-P.7) for computing the deceased's income. Ex-P.7 shows that the deceased totally earned a sum of Rs.13,72,869/- in the said assessment year, as tabulated hereunder:

Income from Salary	Rs.3,24,359/-
Income from House Property	Rs.24,894/-
Income from business/profession	Rs.5,94,500/-
Income from other sources	Rs.4,29,116/-

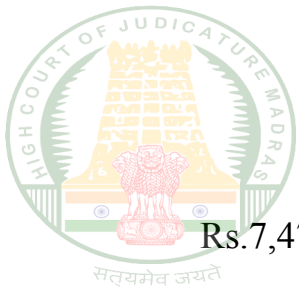


CMA NO.2917 OF 2023

Total	Rs.13,72,869/-
-------	----------------

WEB COPY

15. In the assessment year 2018 - 2019, the deceased earned a sum of Rs.3,24,359/- as salary, and further earned a sum of Rs.5,94,500/- as his business/professional income. Total of these two heads come to Rs.9,18,859/- per annum. It is to be noted that the Income from House Property will not be affected by the demise of the deceased. Further, the petitioners failed to show that the income from Other Sources were affected / diminished / lost after the demise of the deceased. If really any loss occurred, the onus lies on the petitioners to plead and prove such a loss. The same cannot be assumed or presumed in the absence of any acceptable evidence or documents. In this case, there is no further evidence to explain the income from the House Property and that from Other Sources. Hence, they shall not be taken into consideration while computing his income. Further, since the income of the deceased was more than Rs.10,00,000/-, the deceased was liable to pay 30% thereof as income tax, as well as educational Cess. Thus, the Tribunal rightly excluded the income from House Property and Other Sources, and took a sum of Rs.9,18,859/- per annum as his income and deducted tax, including the educational Cess of Rs.1,70,916/-, to arrive at the net income of



CMA NO.2917 OF 2023

Rs.7,47,943/- per annum, and rounded it off to Rs.7,48,000/-.

WEB COPY

16. Further, considering the fact that the date of birth of the deceased is August 26, 1949, the deceased would have been 69 years old at the time of accident. Hence, the Tribunal has rightly applied the multiplier of 5. But the Tribunal is not justifiable in deducting 50% towards his personal expenses. It is true that the petitioners 2 and 3 already got married and the second petitioner is working as a Professor, and hence, they are not financial dependants of the deceased. However, the Tribunal is not justified in deducting $\frac{1}{2}$ of the deceased's income towards his personal expenses, for the reason that standardized deduction for a married person is $\frac{1}{3}$ rd in view of **Sarla Verma's Case** (cited *supra*), whereof Paragraph No.30 reads thus:

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra [(1996) 4 SCC 362] , the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the



WEB COPY



CMA NO.2917 OF 2023

deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.”

17. Deduction of 50% towards personal expenses is permissible when the deceased is a bachelor or a bachelorette. Deduction of 50% in case of a married deceased cannot be made unless it is an exceptional case where the peculiar facts and circumstances demand 1/3rd deduction. This Court finds no peculiarity in this case to deviate from the standardized deduction of 1/3rd for a married person. Thus, by deducting 1/3rd towards personal expenses, the compensation under the head of loss of dependency/income would be Rs.24,93,334/- [Rs.7,48,000/- X 5 X 2/3].

18. Though the petitioners 2 and 3 are not financially dependent on the deceased / father, they would have been dependent on him for love, affection, care, protection, guidance, parental aid, etc. Hence, they are entitled to loss of consortium on par with the first petitioner. The



CMA NO.2917 OF 2023

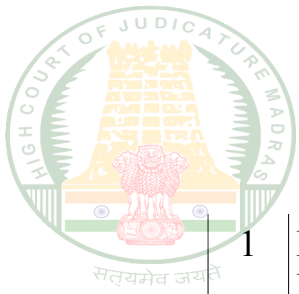
Tribunal has awarded Rs.20,000/- each under the said head which is not in tune with the guidelines laid down by Hon'ble Supreme Court in ***National Insurance Company Limited -vs- Pranay Sethi***, reported in (2017) 16 SCC 680. Hence, the same is liable to be enhanced to Rs.40,000/- each.

19. This Court finds nothing irregular with the compensation awarded by the Tribunal under the other two conventional heads *viz.*, loss of estate and funeral expenses. They appear to be just and reasonable and in tune with ***Pranay Sethi's Case***.

20. Further, the Tribunal upon rightly finding that the petitioners 2 and 3 are not financial dependents, has erroneously apportioned Rs.4,50,000/- each to the petitioners 2 and 3. This Court is of the view that the first petitioner being the sole financial dependent, the petitioners 2 and 3 are not entitled to any compensation other than that awarded to them under the head of loss of consortium (parental).

21. To sum up, this Court is inclined to modify the compensation awarded by the Tribunal as tabulated hereunder:

<i>Sl. No.</i>	<i>Head</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>
-----------------------	--------------------	--	--

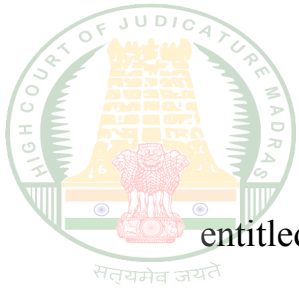


CMA NO.2917 OF 2023

1	Loss of Income/Dependency	Rs.18,70,000.00	Rs.24,93,334.00
2	Loss of Estate	Rs.15,000.00	Rs.15,000.00
3	Loss of Consortium (first petitioner/wife)	Rs.40,000.00	Rs.40,000.00
4	Loss of Consortium (petitioners 2 and 3)	Rs.40,000.00 (Rs.20,000/- each)	Rs.80,000.00 (Rs.40,000/- each)
5	Funeral expenses	Rs.15,000.00	Rs.15,000.00
Total		Rs.19,80,000.00	Rs.26,43,334.00

CONCLUSION:

22. In view of the foregoing narrative, the second respondent / Insurance company is directed to deposit the enhanced award amount of **Rs.26,43,334/- (Rupees Twenty-Six Lakh Forty-Three Thousand Three Hundred and Thirty-Four only)** along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P.No.4427 of 2019 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai, less the amount if any already deposited, within a period of two months from the date of receipt of copy of this Judgment. On such deposit being made, the petitioners are entitled to withdraw their respective shares as apportioned by this Court by filing proper application. Further, the petitioners are



CMA NO.2917 OF 2023

entitled proportionate costs and Advocate fees as per Rules.

WEB COPY

23. Resultantly, the Civil Miscellaneous Appeal is allowed in part by awarding an enhanced compensation of Rs.26,43,334/- as detailed above, with proportionate costs.

[J.N.B., J.]

[R.S.V., J.]

07 / 01 / 2025

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order : Yes
kkd/TK

To:

The Motor Accident Claims Tribunal
Chief Court of Small Causes,
Chennai.



WEB COPY



CMA NO.2917 OF 2023

J.NISHABANU, J.
AND
R.SAKTHIVEL, J.

kkd/TK

PRE-DELIVERY JUDGMENT MADE IN
CMA NO.2917 OF 2023

07 / 01 / 2025