



CMA.No.928 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.03.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.928 of 2023

1.Thaseena
2.Aesha (Minor)
3.Arshiya (Minor)
4.Rehman (Minor)
Sagodaran (died during pendency of MCOP)
(Minor appellants 2 to 4 rep. By mother next friend
and natural guardian 1st appellant Mrs.Thaseena)

... Appellants

Vs.

1.P.Subramani
2.National Insurance Company Limited,
Motor Third Party Claims Office,
No.66, Greams Road,
Chennai – 600 006

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment dated 01.07.2022 passed in MCOP.No.1467 of 2019 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellants :Mr.K.Sivakumar
For Respondents :M/s.M.Krishnamoorthy for R2
No Appearance for R1

J U D G M E N T



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Not satisfied with the quantum of compensation fixed by the Motor Accident Claims Tribunal, the claimants have come by way of this appeal.

2. It is not in dispute that the husband of the first claimant and the father of the claimants 2 to 4 namely Ibrahim, died in a road accident that had taken place on 21.01.2019. It is the case of the claimants that the deceased was travelling as a pillion rider in a motorcycle driven by one Thennarasu. The Tanker Lorry belonging to the first respondent insured with the second respondent came in the opposite direction in a rash and negligent manner and dashed against Motorcycle, as a result of the same, the deceased sustained fatal injury and died on the spot. Therefore, the claim petition was filed seeking compensation of Rs.40,00,000/-.

3. Both the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the second respondent/Insurance Company have not advanced any arguments on the questions of negligence and liability and they are not discussed in this



judgment.

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4. Though the 1st respondent is served and his name appears in the cause list, there is no representation for the 1st respondent.

5. The learned counsel appearing for the claimants would submit that the amount of Rs.9,000/- fixed by the Tribunal towards notional income of the deceased is very much on the lower side.

6. The learned counsel appearing for the second respondent/Insurance Company would submit that the claimants have not produced any documents to prove avocation and income of the deceased and hence the Tribunal was justified in fixing Rs.9,000/- as notional income.

7. In the claim petition, it was averred by the claimants that the deceased was employed as Electrician and he was earning Rs.700/- per day. However, they have not produced any documentary evidence to prove his avocation and income. Even, if no documentary evidence is available to prove the income, taking into consideration, the facts and circumstances of



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the case, the Tribunal can fix the notional income. In the case on hand, the accident occurred on 21.01.2019, therefore taking into consideration the date of accident and the prevailing cost of living, this Court feels it appropriate to fix Rs.16,500/- as the notional income. The Tribunal based on the death certificate Ex.P2 fixed the age of the deceased as 40.

8. The learned counsel vehemently contended that in the death report and in the copy of the post mortem certificate, age of the deceased was mentioned as 38 years and therefore, the Tribunal should have fixed the age of deceased as 38 years. Ex.P2-death certificate is the extract from the death register maintained by the statutory authorities. Therefore, the age mentioned in Ex.P2 shall not be given weightage. Ex.P2-death certificate will prevail over post mortem report which gives only approximate age and therefore, the age of the deceased is fixed at 40. It is to be emphasised even if age of claimant is fixed as 38, the multiplier will not change. As per ***Sarla Verma*** case, applicable multiplier for the age bracket 36 years to 40 years is 15. Therefore, the applicable multiplier will be 15 and the claimants are entitled to 25% as per the **law laid down by the Apex Court in *Sarla Verma and others vs. DTC and others* reported in (2009) 6 SCC 121..**



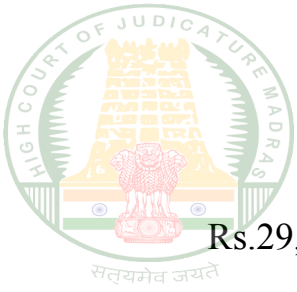
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Therefore, the claimants are entitled as Rs.27,84,375/- towards loss of dependency (Rs.16,500/-x1.25x12x15x3/4).

9. The amount awarded by the Tribunal under the heads loss of consortium, love and affection, loss of estate and funeral expenses are in accordance with law laid down in *National Insurance Company Limited vs. Pranay Sethi and others* reported in (2017) 16 SCC 680 and hence the same are confirmed. Accordingly, the claimant is entitled to Rs.29,74,375/-, and the award passed by the Tribunal is modified as follows

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of Dependency	Rs.15,18,750/-	Rs.27,84,375/-
2.	Loss of Estate	15,000/-	15,000/-
3.	Loss of Consortium	1,60,000/-	1,60,000/-
4.	Funeral expenses	15,000/-	15,000/-
	Total	Rs.17,08,750/-	Rs.29,74,375/-

In view of the discussions made earlier, the Civil Miscellaneous Appeal is allowed and the respondents are directed to pay a sum of

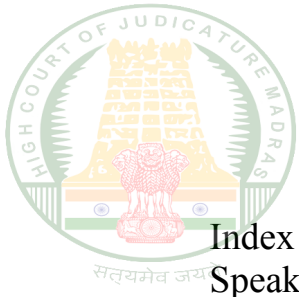


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Rs.29,74,375/- to the claimants as compensation. The claimants 2 to 4 are entitled to Rs.7,00,000/- (each). The first claimant is entitled to Rs.8,74,375/-. The first claimant is entitled to withdraw her share of the award amount. The 2nd respondent is directed to deposit the enhanced award amount together with interest into the credit of MCOP.No.1467 of 2019, on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai within a period of six weeks from the date of receipt of copy of this judgment. The share of the minor claimants 2 to 4 shall be deposited in any one of the Nationalized bank in a fixed deposit scheme initially for a period of three years and the same shall be renewed periodically till the attainment of majority by minors. The guardian of the minor victims/1st claimant shall be permitted to withdraw the accrued interest once in three months by making proper application before the Tribunal.

10. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

03.03.2025



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Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

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

2.The Section Officer

VR Section, High Court, Madras.

S.SOUNTHAR, J.

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