



CMA.No.549 of 2025

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :25.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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1. Minor Shahitha Banu
(Represented by its next friend/Grandfather
S.Abdulkhader)
2.S.Abdulkhader
3. A.Gowhertaj

... Appellant

Vs.

1.P.Krishnaraj

2. The Oriental Insurance Company Limited
Door No.73/B1, Lakshmi Complex
Salai Road, Thillai Nagar
Tiruchirappali 620 018

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to enhance the compensation in the Judgment and decree dated 27.03.2024 made in MCOP No.125/2020, on the file of Motor Accident Claims Tribunal/Sub Court Attur, Salem District.

For Appellants : Mr.M.Lokesh
For Respondent 2 :M/s.Suryakala
for M/s.R.Rathna Thara



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JUDGMENT

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

2. It is not in dispute that the mother of the first claimant and daughter of the claimants 2 and 3, namely Ajmath Bee died in a road accident that had taken place on 21.01.2020. It is the case of the claimants that the deceased was travelling in the bus belonging to the first respondent and insured with the second respondent. The bus was driven by the driver of the first respondent in a rash and negligent manner. It was specifically claimed by the claimants that when the deceased was alighting from the bus, the driver of the first respondent bus, in a rash and negligent manner, suddenly started the bus and hence, the deceased lost her control and fell down on the road from the bus. As a result of which, she sustained injuries in her head and died enroute to the hospital. It was further claimed that the deceased was aged about 37 years and engaged as a labourer in Vijayalakshmi Enterprises and was earning a sum of Rs.15,000/- per month.



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3. The first respondent remained *ex-parte* before the Tribunal and the second respondent filed a counter and denied the averments contained in the claim petition. It is the case of the second respondent that the accident had occurred only due to the negligence of the deceased.

4. Before the Tribunal, the second claimant was examined as PW1 and one eyewitness was examined as PW2. On behalf of the claimants, 16 documents were marked as Exhibit P1 to Exhibit P16. On behalf of the respondents, no oral or documentary evidence were marked.

5. The Tribunal, based on the evidence available on record, fixed negligence on the part of the driver of the first respondent bus and awarded compensation of Rs.21,84,300. Not satisfied with the quantum of compensation, the claimants have come before this court by way of this appeal.



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6. The learned counsel for the appellants submitted that the accident had taken place in the year 2020 and the notional income of Rs.12,000/- fixed by the Tribunal is very much on the lower side and the same needs to be enhanced.

7. The learned counsel for the Second Respondent/ Insurance Company submitted that the claimants have not produced any document to prove the avocation and income of the deceased. Hence, the Tribunal was justified in fixing Rs.12,000/- as notional income.

8. In the claim petition, it was averred by the claimants that the deceased was employed as a labourer in Vijayalakshmi Enterprises and drawing a salary of Rs.15,000/- per month. However, the claimants have not produced any documentary evidence to prove the income or avocation of the deceased.

9. Even if there is no evidence on the part of the claimants to prove the income, this court, taking into consideration the facts and circumstances of the case, can fix the notional income. In the case on hand, the accident had occurred on 21.01.2020. Taking into consideration the date of accident and the prevailing cost of living, this



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WEB COPY court feels that it would be appropriate to fix some more amount as the notional income. In the case on hand, the claimants pleaded in the claim petition that the deceased was drawing only Rs.15,000 per month. In view of the said pleading, this court feels that it would be appropriate to fix the notional income as Rs.15,000/- per month. The age of the deceased was fixed as 37 years based on the post-mortem report. Therefore, the claimants are entitled to 40% enhancement towards future prospects. The applicable multiplier would be 15. In that case, the claimants are entitled to Rs. 25,20,000 towards loss of dependency.

$$15,000 \times 1.4 \times 12 \times 15 \times 2 / 3 = \text{Rs. } 25,20,000$$

10. The Tribunal awarded a sum of Rs.18,150/- each under the heads of loss of estate and funeral expenses. It also awarded Rs.44,000/- under the head loss of consortium to 1st claimant and Rs. 88,000/- towards filial consortium to claimants 2 and 3.

11. As per *Pranay Sethi case*, the enhancement in the conventional heads are permissible only in case the accident had occurred after expiry of 3 years. The judgment of the Hon'ble Apex



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WEB COPY Court in ***Pranay Sethi*** case was delivered on 31.10.2017. The accident had occurred in the year 2020 well within the period of 3 years. Therefore, the claimants are not entitled to enhancement under the conventional heads. The first claimant is entitled to Rs. 40,000/- under the head loss of love and affection. The claimants 2 and 3 are entitled to Rs.80,000/- under the head loss of filial consortium. Likewise, the claimants are entitled to Rs.15,000 each under the heads loss of estate and funeral expenses. In all, the claimants are entitled to Rs. 26,70,000/-.

12. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:-

Sl . N o	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced
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		(Rs)	(Rs)	or granted
1.	Loss of dependency	20,16,000/-	25,20,000/-	Enhanced
2.	Loss of estate	18,150/-	15,000/-	Reduced
3.	Loss of Filial Consortium(2 nd and 3 rd claimants)	88,000/-	80,000/-	Reduced
4.	Funeral expenses	18,150/-	15,000/-	Reduced
5.	Loss of Love and Affection (1 st claimant)	44,000/-	40,000/-	Reduced
	Total	21,84,300/-	26,70,000/-	Enhanced by Rs.4,85,700 /-

13. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.21,84,300/- is hereby enhanced to Rs.26,70,000/-. The appellants are entitled to interest at the rate of 7.5% per annum (excluding the delay period, if any)from the date of filing of the claim petition till the date of realization. The second respondent /Insurance company is directed to deposit the enhanced award amount along with interest and costs, less the amount already deposited, if any, within a period of four



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WEB COPY weeks from the date of receipt of copy of this Judgment.

14. As far as apportionment is concerned, the minor 1st claimant/1st appellant is entitled to a sum of Rs.19,00,000/-. The claimants 2 and 3/appellants 2 and 3 are entitled to a sum of Rs.7,70,000/-.

15. The 1st appellant/ 1st claimant being minor, her share of award amount is directed to be invested in anyone of the Nationalized Banks under a Fixed Deposit Scheme **for a period of three years** which shall be renewed periodically until she attains majority and the 2nd appellant/2nd claimant, being the Guardian of the minor 1st claimant, is permitted to withdraw the interest accrued thereon once in three months and the same shall be used for the welfare of the minor 1st claimant. The claimants 2 and 3 are permitted to withdraw their share of award amount, along with interest and costs, less the amount if any, already withdrawn by making proper application before the Tribunal. No costs.

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Index: Yes/No

Internet: Yes/No

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To

1. Motor Accident Claims Tribunal,
Sub Court Attur, Salem District.
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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