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CMA.No.90 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.90 of 2025

1. Azhagesan
  2. Kalaiyarasi
  3. Kavitha
- ...Appellants

Vs.

1. K.V.P.Saminathan
  2. The Manager,  
National Insurance Company Limited,  
25, Whites Road, Chennai – 600 014.
- ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and decree dated 20.06.2013 made in I.A.No.358 of 2011 in MCOP.No.900 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Ariyalur.

For Appellants : Mr.A.A.Venkatesan

For Respondents : Mrs.N.B.Surekha, for R2



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## **JUDGMENT**

Challenging the judgment and decree dated 20.06.2013 made in I.A.No.358 of 2011 in MCOP.No.900 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Ariyalur, the claimants have come up with this appeal.

2. Mrs.N.B.Surekha, learned counsel takes notice on behalf of the 2<sup>nd</sup> respondent. In view of the consent expressed by the learned counsel on either side, this appeal is taken up for final disposal at the admission stage itself.

3. Since the 1<sup>st</sup> respondent remained exparte before the trial court, notice to the 1<sup>st</sup> respondent is dispensed with.

4. It is the case of the claimants that, on 23.12.2004 at about 7.00 am., when the deceased Suresh was proceeding in his TVS 50 vehicle bearing Regn.No.TN-46-B-0762 on the Jayankondam to Virudhachalam main road along with one Alagappan, at that time, the bus bearing Regn.No.TN-46-C-3341 owned by the 1<sup>st</sup> respondent, insured with the 2<sup>nd</sup>



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respondent driven by its driver came in a rash and negligent manner and dashed against the above said TVS 50 vehicle, due to which the deceased Suresh sustained fatal injuries and succumbed to the same. Thereby, the appellants, who are the dependents of the deceased Suresh filed a claim petition in MCOP.No.900 of 2005 claiming a compensation of Rs.10,00,000/-. Before the Tribunal, the claimants examined two witnesses viz. P.W.1 and P.W.2 and marked exhibits P.1 to P.7 and on the side of respondents, no documents were marked and no witnesses were examined. After trial, the Tribunal, on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the driver of the 1<sup>st</sup> respondent vehicle and awarded a sum of Rs.3,94,500/- towards compensation for the death of the deceased Suresh. Aggrieved by the same, the 2<sup>nd</sup> respondent/insurance company filed a Review petition in I.A.No.358 of 2011 and the tribunal had reduced the compensation awarded to Rs.2,02,000/-. Being not satisfied with the quantum of compensation arrived at by the Tribunal, the appellants/claimants have come up with this appeal seeking enhancement of compensation.



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5. Learned counsel for the appellants submitted that the above said accident happened solely due to the rash and negligent driving on the part of the driver of the 1<sup>st</sup> respondent vehicle, against whom a case was registered in Crime No.810 of 2004 and at the time of accident, the deceased Suresh was aged about 18 years and was doing Mechanic works and was also involved in Medicinal oil trees business and was earning a sum of Rs.4,500/- per month and the deceased was the only bread winner of their family and the entire family was depending on his income. However, the tribunal had taken the notional income of the deceased as Rs.1,500/-, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions and thereby, the same has to be increased to Rs.10,000/- and the compensation awarded under other heads are also on the lower side and the same needs to be enhanced. Accordingly, he prayed for appropriate orders.

6. Per contra, the learned counsel appearing on behalf of the 2<sup>nd</sup> respondent-Insurance Company contended that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, she prays for



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dismissal of the appeal.

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7. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties and the parties have not raised any issue on the aspect of negligence and therefore, this Court is not venturing into the same.

9. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2004 and it is the claim of the appellants/claimants that at the time of accident, the deceased was aged about 18 years, however, in the postmortem report, marked as Ex.P.2, the age of the deceased was mentioned as 20 years and from the Transfer Certificate, marked as Ex.P.6, it can be seen that the deceased was 18 years old.

10. In such a contradictions of the materials, though the learned



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counsel for the 2<sup>nd</sup> respondent/insurance company seeks to rely on the postmortem certificate, Ex.P.2 for fixation of the age of the deceased at 29 year, it is always known that the Doctors prescribed the age in the Postmortem certificate based on the anatomical analysis and it will be certainly appropriate and can never be accurate, since it is a procedure carried out on a body after death, in order to determine the cause of the death of a person. Therefore, in the absence of any other self declaration document, the age prescribed in the postmortem certificate shall be considered. However, in the present case, when the Transfer Certificate of the deceased, which is marked as Ex.P.6 is available, which is a contemporaneous record, the same is to be taken as conclusive and the age in the postmortem certificate can never be construed as conclusive. Therefore, this Court is not inclined to consider the arguments advance by the learned counsel for the 2<sup>nd</sup> respondent and the findings of the tribunal will prevail over and accordingly, this Court is of the unambiguous view that the age stated in the Transfer certificate alone will prevail for the purpose of fixation of compensation by the tribunal and thereby, this Court fixes the age of the deceased as 18 years and there is no justification to reject the said certificate and the age of the deceased fixed



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by the tribunal on the basis of the said certificate cannot be said to be erroneous. However, while adopting the multiplier for the age of 18 to the deceased, the proper multiplier is 18, however, the tribunal had erroneously fixed the same as 16, which requires to be interfered with. Accordingly, the multiplier of 16 fixed by the tribunal is set aside and the multiplier to arrive at the compensation under the head Loss of Dependency is fixed at 18.

11. A perusal of the claim petition it is evident that the deceased was an ITI holder and was a Mechanic by profession, however, the Tribunal has fixed the notional monthly income at Rs.1,500/-, which is on the lower side. Applying the ratio laid down by the Hon'ble Apex Court in catena of decisions, and also considering the age of the deceased as also the claimants, fixing a notional income of Rs.4,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in **2017 (16) Supreme Court Cases 680**, the income per month is quantified at Rs.5,600/-. Deducting 50% towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.2,800/-



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per month and the deceased being aged about 18 years, as evidenced from the records, adopting the multiplier of 18 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in (2009) 6 **SCC 121**, the loss of income to the family is arrived at Rs.2,800/- \* 12 \* 18 = Rs.6,04,800/-.

12. Insofar as the compensation awarded under the heads Loss of love and affection and funeral expenses are concerned, a sum of Rs.2,000/- and Rs.3,000/- respectively have been awarded and the same is very meagre and thereby, this Court is inclined to enhance the same to Rs.90,000/-(30,000/- \* 3 = 90,000/-) and Rs.15,000/- respectively and no compensation has been awarded under the head loss of estate. Hence, this Court awards a sum of Rs.15,000/- under the said head. At the same time, a sum of Rs.5,000/- towards Loss of life, which is not sustainable and thereby, the same is rejected.

13. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-



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| <i><b>Heads</b></i>        | <i><b>Amount awarded by the Tribunal (Rs.)</b></i> | <i><b>Modified Award Amount (Rs.)</b></i> |
|----------------------------|----------------------------------------------------|-------------------------------------------|
| Loss of dependency         | 1,92,000/-                                         | <b>6,04,800/-</b>                         |
| Loss of love and affection | 2,000/-                                            | <b>90,000/-</b>                           |
| Loss of life               | 5,000/-                                            | -                                         |
| Funeral Expenses           | 3,000/-                                            | <b>15,000/-</b>                           |
| Loss of estate             | -                                                  | <b>15,000/-</b>                           |
| <b>Total</b>               | <b>2,02,000/-</b>                                  | <b>7,24,800/-</b>                         |

14. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in I.A.No.358 of 2011 in MCOP.No.900 of 2005 is modified by enhancing the compensation amount from **Rs.2,02,000/-** to **Rs.7,24,800/-**. The 2<sup>nd</sup> respondent Insurance is directed to deposit the said amount to the credit of I.A.No.358 of 2011 in MCOP.No.900 of 2005 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. The 1<sup>st</sup> and 2<sup>nd</sup> appellants are entitled to a sum of Rs.3,00,000/- and the 3<sup>rd</sup> appellant is entitled to get the award amount of Rs.1,24,800/- with proportionate interest and costs. On such



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deposit being made, the Tribunal is directed to transfer the compensation amount directly to the bank account of the appellants through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. It is underscored that the appellants are not entitled to any interest for the default period, if any. No costs.

**23.01.2025**

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NCC : Yes/No  
Index : Yes/No  
Speaking Order : Yes/No

To:

The Motor Accident Claims Tribunal,  
Additional District Judge,  
Ariyalur.



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**M.DHANDAPANI, J.**

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