



C.M.A(MD)No.119 of 2024

WEB COPY      BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A(MD)No.119 of 2024

1. V. Femeena  
2. Minor V. Yashwanth  
3. T. Logamani  
4. M. Thavasi  
(Minor 2<sup>nd</sup> appellant is represented  
through his mother and next friend  
of the 1<sup>st</sup> petitioner)

... Appellants/Petitioners

- Vs -

1. A. Logirajan  
2. The Deputy Manager,  
The New India Assurance Company Ltd.,  
Motor T.P.H.U.B. M&S Bhavan,  
70 Feet Road, Ellis Nagar,  
Madurai-625 016.  
... Respondents/Respondents

**PRAYER:** This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, as against the order made in MOP No. 931 of 2022 on the file of the Motor Accident Claims Tribunal/Special District Court to deal with Motor Accident Cases, Madurai dated 13.09.2023 for enhancement of compensation.

For Appellant	: M.K. Kumaresan
For R2	: Mr. J.S. Murasi
For R1	: Dispensed with



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## JUDGMENT

*This Civil Miscellaneous Appeal has been preferred by the claimants, who are the legal heirs of the deceased Vijayakumar, against the award dated 13.09.2023 passed in MGP No.931 of 2022 by the MCG Special District Court, Madurai.*

*2. The case of the claimants as narrated in the claim petition is given hereunder:*

*On 14.02.2022 at about 12.45 hours in the afternoon, while the deceased was standing with his two wheeler bearing Registration No. TN-58-TW-4530 on the southern side of the east - west main road, in order to cross the road from south to north, at that time, a passenger bus bearing Registration No. TN-60-TT-3445, which was proceeding from east to west at a high speed without sounding horn and dashed against the deceased on the extreme south side of the road and the said Vijayakumar, who was standing with the two wheeler succumbed to the injuries.*



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3. The accident occurred due to the negligent driving of the bus of the first respondent. Therefore, the owner of the bus, first respondent and the insurer of the said bus, the second respondent are jointly and severally liable to pay compensation to the claimants/legal heirs of the deceased V Jayakumar, who died in a road accident that occurred on 14.02.2022.

4. The details of the counter of the second respondent are stated in brief:

The claimants are put to strict proof of the manner in which the accident occurred. The deceased who suddenly crossed the main road without minding the vehicles which were plying on the road. Further, the deceased did not wear protective gear (Helmet) at the time of the accident, thereby he suffered head injury. Therefore, the deceased has contributed negligence. The claimants are also put to strict proof of the age, avocation and income of the deceased.

5. At trial, on the side of the petitioner, three witnesses were examined and 23 documents were marked. On the side of the second respondent, one witness was examined.



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6. Upon consideration, the Tribunal after appreciating the ocular evidence of P.W.1 and R.W.1, came to a conclusion that the accident occurred only due to the rash and negligent driving of the driver of the first respondent bus and fastened the liability on the first and second respondents, who are the owner and insurer of the said bus and granted compensation of Rs.31,05,258/- . Further, the Tribunal fixed the notional income of the deceased at Rs.10,000/- per month. By adding 40% future prospects and after deducting 1/4<sup>th</sup> for personal living expenses of the deceased and arrived at loss of income of the deceased at Rs.1,26,000/-.

7. The appeal is specifically focussed on the fixation of notional income of Rs.10,000/-p. m.

8. The learned counsel for the appellant would vehemently argue that the deceased was 33 years old person, who was doing finance business met with an accident due to the negligent driving of the first respondent bus and succumbed to the injuries leaving four legal heirs, who are the claimants before this Court as the appellants herein. He would further contend that he was doing finance business and earning a sum of



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Rs.30,000/- per month. But the Tribunal has fixed the notional income of the deceased at Rs.10,000/- is much less and sought for enhancement of compensation.

9. It is the evidence of PW.1 that her husband was aged about 33 years old and he was doing finance business and earning a sum of Rs.30,000/- per month at the relevant point of time. But no document was produced and marked to substantiate the same.

10. Upon consideration of the aforesaid details, as no document is marked to prove his income in order to meet the ends of justice, the notional income of the deceased is fixed at Rs.14,000/-. The Hon'ble Supreme Court has standardized the details of the future prospects in order to compute the income in *National Insurance Company Vs Pranay Sethi and others*, reported in 2017(2)TNMAC 609(SC), for the persons below 40 years 40% has to be added. As held in *Sarala Varma and others Vs Delhi Transport Corporation and another*, reported in 2009(2) TNMAC 1(SC), for the age group of persons between 36 to 40, the



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proper multiplier to be adopted is '15m'. The deceased has left behind his wife, son and parents. Therefore, as per the law laid down by the Hon'ble Supreme Court in Sarala Varma case (cited *supra*), for deduction of personal and living expenses, if the dependant family members are four in number, ¼ has to be deducted for personal and living expenses. Based on the aforesaid details, the loss of dependency is computed as given hereunder:  $14,000 + 40\% - \frac{1}{4} \times 15 \times 12 = 26,46,000/-$ . As regards the other heads, the amounts awarded by the Tribunal appears to be reasonable and acceptable. Hence, it needs no interference. The compensation awarded by the Tribunal is reworked and tabulated hereunder.

S. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Loss of Income	Rs. 20,16,000/-	Rs. 26,46,000/-	Enhanced
2	For Loss of Spousal Consortium	Rs. 40,000/-	Rs. 40,000/-	Confirmed
3	For Loss of Parental Consortium	Rs. 40,000/-	Rs. 40,000/-	Confirmed
4	For Loss of Fiduciary Consortium	Rs. 80,000/-	Rs. 80,000/-	Confirmed
5	For Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
6	For Loss of Estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
7	For Transport Expenses	Rs. 5,000/-	Rs. 5,000/-	Confirmed



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S. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
8.	For Medical Expenses	Rs. 8,94,258/-	Rs. 8,94,258/-	Confirmed
	Total	Rs. 31,05,258/-	Rs. 37,35,258/-	

Round off as Rs.37,35,000/-. Deduction Rs.62,974/-.

11. In the result,

(i) The Civil Miscellaneous Appeal stands allowed.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.31,05,258/- to Rs.37,35,000/-.

(iii) The Insurance Company/second respondent is directed to deposit the enhanced compensation amount i.e., Rs.37,35,000/- (less the amount already deposited if any) together 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.N.931 of 2022 on the file of Motor Accidents Claims Tribunal /Special District Court to deal with Motor Accident Cases, Madurai, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment.



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(iv) On such deposit being made, the claimants/appellants 1, 3 & 4 are permitted to withdraw their shares along with interest and costs as apportioned by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. As the second appellant/claimant is a minor, the Tribunal shall deposit the share of the minor claimant in a Fixed Deposit in any one of the Nationalized Banks, till the minor claimant attains majority. The guardian of the minor claimant is permitted to withdraw the interest accrued thereon once in three months directly from the bank.

(v) The claimants/appellants are directed to pay the Court fee for the enhanced compensation amount, if required.

(vi) The Tribunal shall disburse the amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

(vii) No costs.

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NGC: Yes/No

Index: Yes/No

Internet: Yes/No



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To

1. The Motor Accident Claims Tribunal/  
Special District Court  
to deal with Motor Accident Cases,  
Madurai.

2. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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R. KALAIMATHI, J.

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