



C.M.A.No.3261 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2025

CORAM

THE HON'BLE Mr. *JUSTICE* R. SURESH KUMAR
AND
THE HON'BLE Dr. JUSTICE A.D.MARIA CLETE

C.M.A.No.3261 of 2024
AND
C.M.P.No.27503 of 2024

The Legal Claim Manager
New India Assurance Co. Ltd.
No.181, Jawaharlal Nehru Street
M.G.Road, Pondicherry-1
PIN-605 001

.. Appellant

Vs.

1.Poongodi
2.Pushpavalli
3.Ramasamy
4.Sumathi

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.12.2023 made in M.C.O.P.No.60 of 2022 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Thitagudi.

For Appellant : Ms.A.Salomi
For Respondents : No appearance



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JUDGMENT

(Delivered by R. SURESH KUMAR, J.)

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This Civil Miscellaneous Appeal has been directed against the award dated 01.12.2023 passed by the Motor Accident Claims Tribunal (Sub Court), Tittagudi, in M.C.O.P.No.60 of 2022.

2. On 09.05.2022, a motor vehicle accident took place near Navalar Neduncheliyan Engineering College, Vaidhiyanathapuram (Chennai-Trichy National Highway).

3. The vehicle involved in the accident is an autorickshaw with registration No.TN 91 S 3346. Due to this accident, the husband of the 1st claimant, who is the 1st respondent herein and the father of the 2nd claimant and 3rd claimant, who are the respondents 2 and 3 herein, viz., Annamalai died. Therefore, in order to seek compensation for a sum of Rs.25,00,000/-, the said M.C.O.P. was filed.

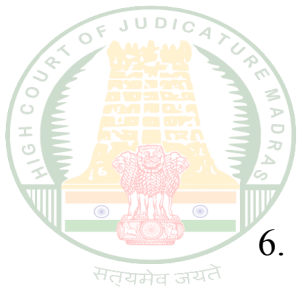
4. The Tribunal, having considered the evidence adduced before it, had come to the conclusion that due to the rash and negligent driving on the part of the autorickshaw driver, such an accident had taken place and accordingly,



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liability was fixed on the insurer/appellant with which the autorickshaw was insured and following the ratio laid down by the Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi and Others [(2017)16 SCC 680]***, the notional income of the deceased was fixed at Rs.17,000/- per month. Accordingly, the future prospects was taken at 25% and following the judgment in ***Sarla Verma and Others Vs Delhi Transport Corporation and Another [(2009) 6 SCC 121]***, the Tribunal has come to the conclusion that the loss of income and future prospects of the deceased would be at Rs.22,10,052/- and quantifying compensation under certain other heads also, the Tribunal, through the impugned award, ultimately, awarded a total sum of Rs.23,75,052/- which is rounded off to Rs.23,75,000/-.

5. Assailing the said impugned award, the learned counsel appearing for the appellant/insurance company would contend that as per the FIR, at the time of accident, the said autorickshaw was carrying 12 passengers plus driver, which is in violation of the policy condition. Therefore, even though the insurance policy was subsisting on the date of accident, in view of the violation of the policy condition, the liability cannot be fastened on the appellant/insurance company.



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6. The learned counsel would also canvass the point that fixation of Rs.17,000/- by the Tribunal as notional income of the deceased as against the claim of Rs.30,000/- per month as an agriculturist-cum-painting contractor without there being any evidence, is on the higher side and therefore, the quantum also is questioned by the learned counsel for the insurance company.

7. We have considered the said submissions of the learned counsel for the appellant/insurance company and perused the materials placed before this Court.

8. Insofar as the liability is concerned, even though it was mentioned in the FIR that the autorickshaw carried 13 persons at the time of the accident, nothing was persuaded further and no further evidence was adduced in corroborating or reiterating the said averment made in the FIR.

9. Normally, in the FIR, the version of the 1st complainant could be recorded pursuant to which, investigation must be properly undertaken by the investigating authority, based on which, evidence has to be adduced. At the time of accident, the vehicle was carrying 12 passengers with driver. It was specifically pointed out by the Tribunal in its discussion in the impugned order,



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there is no evidence to prove that the accident occurred due to carrying of 12 passengers by the driver of the autorickshaw. Thus, the finding given by the Tribunal is to be accepted because, there is no evidence recorded before the Tribunal to substantiate the contention of the appellant/insurance company that at the time of accident, the autorickshaw was carrying 13 persons.

10. Therefore, insofar as liability is concerned, it can be fixed on the driver of the autorickshaw as well as the owner of the autorickshaw. However, since the autorickshaw which was involved in the accident has got a valid insurance policy with the appellant/insurance company, naturally, it should be fastened on the insurance company.

11. Insofar as the quantum of the award is concerned, the only grievance of the appellant/insurance company is that the fixation of notional income of the deceased at Rs.17,000/- per month is on the higher side.

12. In this context, even if we take the agricultural income of the deceased, going by the notional income as per the case of *Andal and Others Vs. Abhinav Kannan [2019(1) TNMAC 54 (DB)]*, for the year 2022 *i.e.*, the year of accident, we can fix at Rs.16,000/- as the table in the said judgment

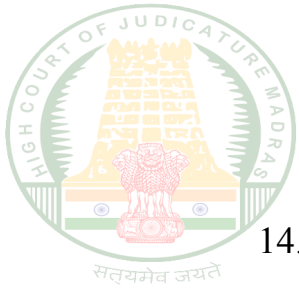


shows Rs.15,973/- for 2021-22 and Rs.16,678/- for 2022-23. Therefore, if not

Rs.17,000/- per month, at least Rs.16,000/- per month can be fixed as notional income for the deceased at the time of accident.

13. If that being the case, if 25% future prospects is added with Rs.16,000/-, the amount would be Rs.16,000 + Rs.4,000 = Rs.20,000/- and if one-third is deducted as personal expenses *i.e.*, Rs.6,666/-, the remaining amount is Rs.13,334/-. For the yearly loss, if it is multiplied by 12 months, it comes Rs.1,60,008/- (Rs.13,334/- x 12 months). If the multiplier 13 is followed, the total amount would be Rs.20,80,104/- (Rs.1,60,008/- x 12 multiplier). As far as the amounts awarded under the remaining heads are concerned, we do not want to interfere with the same. Therefore, the modified award amount would be Rs.22,45,104/-, the break up of which is set out below:

<i>S.No.</i>	<i>Head</i>	<i>Amount now awarded (Rs.)</i>
1	Loss of income	20,80,104
2	Loss of marital consortium for 1 st claimant	44,000
3	Loss of filial consortium for 2 nd claimant	44,000
4	Loss of filial consortium for 3 rd claimant	44,000
5	Loss of estate	16,500
6	Funeral expenses	16,500
	Total	22,45,104



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14. Since it is now submitted by the learned counsel for the appellant/insurance company that the entire award amount has been deposited before the Tribunal, the claimants are now entitled to withdraw the sum of Rs.22,45,104/- as fixed by this judgment, without further reference to this Court and the appellant/insurance company is now entitled to withdraw the balance amount viz., Rs.1,29,896/- [Rs.23,75,000/- (less) Rs.22,45,104/-].

With these modifications, this Civil Miscellaneous Appeal is partly allowed. No costs. Connected C.M.P. is closed.

[R.S.K.,J.] [A.D.M.C., J.]
13.03.2025

Index : Yes / No
Neutral Citation : Yes/No
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To
Motor Accident Claims Tribunal (Sub Court)
Thitagudi



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