

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.04.2021

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

CMA.No.1571 of 2020

and

CMP.No. 11593 of 2020

The Manager
M/s Reliance General Insurance Co., Ltd.,
No.73, 1st Floor, Officer's Line, Vellore. Appellant

Versus

1. Malarvizhi
2. Sambandan
3. Ganapathy Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, to set aside the decree and Judgment dated 30.08.2019 made in M.C.O.P.No.14 of 2013 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Judge, Vellore.

For Appellant	:	Mr.S. Arun Kumar
For R1 and R2	:	M. Siva kumar for C.Prabakaran
For R3	:	No Appearance

JUDGMENT

(The Judgment of the Court was delivered by S.KANNAMMAL, J)

This Civil Miscellaneous Appeal has been filed by the appellant/ insurance company questioning the quantum of compensation awarded by the I Additional District and Sessions Judge, Vellore in Motor Accidents Claims Tribunal in M.C.O.P.No.14 of 2013 on 30.08.2019.

2. The brief facts of the case reads as follows

On 30.11.2012 at about 8.00 a.m the deceased Suresh riding his vehicle bearing Registration No. TN 23 AR 3988 from Pallikaranai to Velacheri Road. At that time on the same direction a water tanker lorry bearing Registration No.TN 01 H 7411 driven by its driver in a rash and negligent manner and dashed against the two wheeler, due to which, the deceased Suresh got unbalanced and fell on the road on the right side, the Lorry tyre ran over the said person and died on the spot itself. Hence the respondents 1 and 2 being the parents of the deceased filed a claim petition in M.C.O.P No 14 of 2013 against the owner of the offending vehicle and the insurance company claiming a sum of Rs. 2,00,00,000/- as compensation for the death of said Suresh.

3. The third respondent owner of the vehicle involved in the accident remained ex-parte before the tribunal.

4. The appellant/insurance company filed a counter statement wherein they denied the averments made by the respondents 1 and 2 in the claim petition.

5. When the matter came up before the tribunal, on the side of the claimants two witnesses were examined via PW1 to PW4 and 8 documents were marked as exhibits via Ex.P1 – P8. On the side of appellant/insurance company, neither any witness was examined nor any documents were produced.

6. On appreciation of oral and documentary evidence, produced on the side of claimants, the tribunal arrived at a finding that the accident had occurred due to the rash and negligent driving of the driver of the third respondent's vehicle. By arriving at such a conclusion, the tribunal directed the appellant/insurance company to pay a sum of Rs.84,28,271/- as compensation to the respondents 1 and 2. The Tribunal further observed that the deceased had not wore helmet at the time of accident 15% was deducted towards the head Contributory negligence. Aggrieved by the quantum of compensation awarded by the tribunal, the appellant/insurance company has filed the present appeal.

7. The learned counsel for the appellant/insurance company vehemently argued that the compensation awarded by the tribunal is very huge which was not even claimed by the claimants. The learned counsel would contend that the tribunal went wrong in fixing 50% of future prospectus. The learned counsel would also contend that the compensation awarded by the tribunal under various heads are huge and sought for the interference of this court to reduce the compensation.

8. On the other hand the learned counsel for the respondents supported the Judgement and decree passed by the tribunal and prayed for dismissal of the Civil Miscellaneous Appeal.

9. Heard both the sides. Perused the materials available on record.

10. Admittedly the deceased was working in Tata Consultancy as IT analyst and thereby earning Rs.60,699/- per month.

11. With regard to the head loss of income the Tribunal has awarded 50% towards future prospects. This Court is of the view that considering the age of

the deceased 40% should be awarded towards future prospectus. Hence, the monthly income of the deceased is fixed as Rs.60,699/- and the amount under the head loss of income is arrived at Rs.78,01,045/-. $(60,699/- \times 12 = 7,28,388$ after deducting $1/2$ towards personal expenses = 3,64,194/-Rs.36,419/- = Rs.3,27,775 40% of the said amount is added towards future prospects = Rs.4,58,885/- and the correct multiplier to be added is 17 and the loss of income comes to Rs.78,01,045/-). With regard to the head loss of love and affection, without an iota of doubt grieving family should be compensated for the loss of love and affection and the Tribunal has awarded Rs.50,000/- to the family members towards the head loss of love and affection, which is very meager and the same is enhanced to Rs.80,000/-. Further, under the head Transport and Funeral Expenses the Tribunal has awarded Rs.5,000/- and the same is enhanced to Rs.15,000/-. The Tribunal has not awarded any amount for loss of estate which is to be fixed at Rs.15,000/-. The Tribunal has awarded Rs.15,000/- towards the head Funeral Expenses which needs no interference

12. Taking all the above aspects into consideration, the compensation awarded by the Tribunal stands modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount modified by this Court (Rs.)</i>
Loss of Income	Rs.83,58,271/-	Rs.78,01,045/-
Loss of Love and affection	Rs.50,000/-	Rs.80,000/-
Funeral Expenses	Rs.15,000/-	Rs.15,000/-
Transport Expenses	Rs.5,000/-	Rs.15,000/-
Loss of Estate	-Nil-	Rs.15,000/-
Total	84,28,271/-	79,26,045/-

As per the findings given by the Tribunal as the deceased had not wore helmet at the time of accident 15% was deducted towards the head Contributory negligence and awarded **Rs. 71,64,030/-** as compensation to the claimants, the same is applied and by deducting 15% towards the head Contributory negligence the award amount comes to **Rs.67,37,138/-** . Hence, the appellant Insurance Company is directed to pay **Rs.67,37,138/-** as compensation to the claimants.

In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

- (i) The award of the Tribunal is modified and reduced from Rs.71,64,030/- to **Rs.67,37,138 /-**
- (ii) The award amount will carry interest at the rate of 7.5% per annum

from

the date of claim petition till the date of deposit.

- (iii) In view of the above modified award amount, the appellant/Insurance company is directed to deposit the award amount with proportionate interest and costs, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order.
- (iv) On such deposit, the claimants are permitted to withdraw the amount awarded as above, by filing proper application before the Tribunal, less the amount if any already withdrawn, with accrued interest. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.
- (v) Connected Miscellaneous petition in CMP.No. 11593 of 2020 is closed
.No Costs.

[R.P.S.,J] [S.K.,J]
30.04.2021

Index : Yes/No

Internet : Yes/No

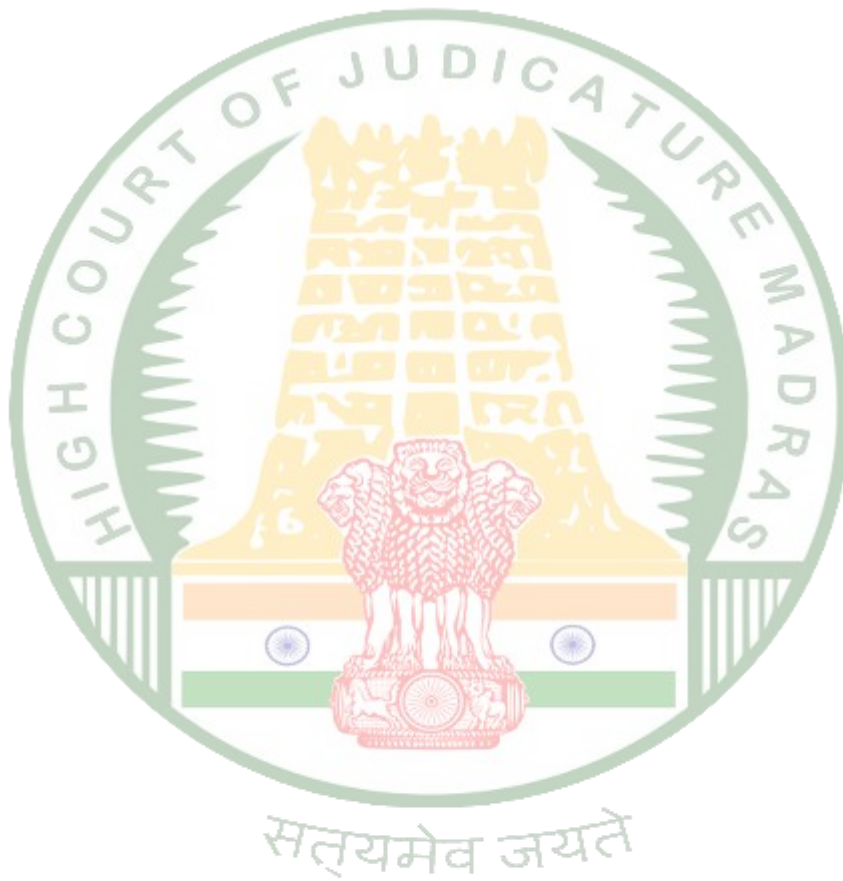
Speaking/Non speaking order

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To

1. The Motor Accidents Claims Tribunal,
I Additional District and Sessions Judge, Vellore.
2. The Section Officer,
V.R.Section,

High Court, Madras.



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R.SUBBIAH, J.

and

S.KANNAMMAL, J.

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