IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1357 of 2022

1.Vasuki
2.Sreeram
3.Angayarkkani …Appellants

Vs.

1.Subramanian

2.Hemachandrababu

3.The Oriental Insurance Co.Ltd, Trichy branch,
Having office at No.4 Promenade road,
Cantonment, Trichy. Pin 620 001.

4.Tata AIG Insurance Co.Ltd, Coimbatore branch,
No.72, 1st Floor, May Flower Castle,
Dr.Balasundaram Road,
P N Palayam, Coimbatore, Tamil Nadu 641 018.
...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.97 of 2016 dated 17.02.2022 on the file of the Motor Accidents Claims Tribunal/Special District Judge, Erode.

For Appellants : Mrs.Ramya V.Rao
For R1 : Not ready in notice
For R3 : Mr.D.Bhaskaran
For R4 : Mrs.C.Harini
for M/s.M.B.Gopalan Associates

JUDGMENT

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

This Civil Miscellaneous Appeal has been filed by the appellants against the Judgment and Decree dated 17.02.2022 made in M.C.O.P.No.97 of 2016 on the file of Motor Accident Claims Tribunal/Special District Court, Erode to deal with M.C.O.P cases Chennai.

2. The Appellants filed M.C.O.P No.97 of 2016 claiming a sum of Rs.95,91,000/- (Rupees Ninety Five Lakhs Ninety One Thousand only) towards compensation for the death of the first appellant/petitioner's husband and the father of second and third appellants.

3. According to the Appellants on the date of accident i.e. on 07.02.2016 at about 14.00 hours the deceased R.Rajeshwaran and the second appellant herein went to buy lunch in a motorcycle namely TVS Jupiter bearing the Registration No.TN 56 F 2918 to Ammu Mess, Thindal. After buying lunch the

deceased started from Ammu Mess, Thindal to their home in Murugan Nagar, Thindal. The second appellant stayed back to meet his friends who came to Ammu Mess. The deceased who rode the vehicle, was waiting near the centre median to cross the road southwards near BVB School road junction, Thindal. At that time the Tempo Traveller bearing the Registration Number TN 45 AQ 0254 driven by the first respondent came from west to east in a rash and negligent manner in a high speed and without observing the rules and regulations of the road and dashed against the vehicle of the deceased. As a result of the accident, the deceased was severely injured and thrown out. Inspite of treatment, he succumbed to injuries. Therefore, the appellants filed the claim petition against the respondent herein.

4. The first and second respondents herein remained ex-parte before the Tribunal. The third respondent herein filed counter denying the averments made in the claim petition and stated that the accident occurred only due to rash and negligent riding of the deceased. The third respondent further stated in the counter that though the accident took place on 07.02.2016, the vehicles were inspected by the Motor Vehicles Inspector only on 18.02.2016 and therefore, the inspection reports cannot be the basis for any conclusion. The third respondent/Insurance Company therefore stated that they are not liable to

pay any compensation. In any event, the compensation claimed by the appellants are excessive. The fourth respondent the insurer of the two wheeler of the deceased, filed counter stating that the accident occurred only due to the rash and negligent driving by the driver of the Tempo Travellor. Hence, they are not liable to pay any compensation to the appellants.

5.Before the Tribunal, two witnesses were examined on the side of the appellants and 26 documents, Ex.P.1 to Ex.P.26 were marked. On the side of the respondents, the first respondent was examined as R.W.1 and the law officer of the 4th respondent was examined as R.W.2 and two documents Exs.R1 and R.2 were marked on their side.

6. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent driving of the first respondent and directed the 3rd respondent Insurance Company being the insurer of the vehicle driven by the first respondent to pay Rs.35,63,844/- (Rupees Thirty Five Lakhs Sixty Three Thousand Eight Hundred and Forty Four only) as compensation to the appellants.

7. Aggrieved by the quantum awarded by the Tribunal the appellants have filed the above appeal for enhancement.

8. The learned counsel appearing for the appellants contended that the Tribunal ought not to have deducted 30% of the gross salary towards family pension, received by the 1st appellant. The Tribunal ought to have taken into consideration the entire gross salary of the deceased as monthly income and after granting 15% enhancement towards future prospects and deducting 1/3rd towards his personal expenses, awarded compensation towards loss of dependency. The Tribunal ought to have taken Rs.79,400/- as the monthly income of the deceased as per the 7th pay commission which he would have earned if he was alive. The income tax deduction made by the Tribunal is not in accordance with the rulings of the Hon'ble Apex Court. The compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

9.The learned counsel appearing for the third respondent submitted that the award was in accordance with law and contented that the compensation awarded by the Tribunal requires no interference.

10.Heard the learned counsel appearing for the appellants, learned counsel for the third respondent and fourth respondent and perused the entire materials on record.

11. From the materials on record, it is seen that the deceased was aged 54 years at the time accident, working as PG Assistant (Physics) in Govt. Higher Secondary School, Chittoor and was earning a sum of Rs.68,602/- per month. The appellants have marked Ex.P.12 – salary certificate to substantiate their contention. The Tribunal considering Ex.P12-salary certificate, fixed a sum of Rs.68,602/- as monthly income of the deceased. As per Ex.P26 – service register, the deceased was aged 54 years at the time of accident. Following the judgments of the Hon'ble Apex Court in **2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another) and 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others],** the Tribunal rightly applied multiplier 11 and granted 15% enhancement towards future prospects. However, the Tribunal erroneously deducted 30% towards family pension and the same is not correct. The Hon'ble Apex Court in the judgment reported in **2013 (1) TNMAC 641 SC [Vimal Kanwar & Ors. vs. Kishore Dan and Ors.**] has categorically held that salary receivable on

compassionate appointment comes within the periphery of the Motor Vehicles Act and the pecuniary advantage received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act. Hence, the deduction of 30% towards family pension made by the Tribunal is liable to be set aside and is hereby set aside. There are three dependents of the deceased and the Tribunal has rightly deducted 1/3rd towards personal expenses. The accident has occurred on 07.02.2016. Thus, by fixing Rs.68,602/- as monthly income of the deceased, the calculation for arriving annual income is as follows :-

Annual income of the deceased (Rs.68,602 x 12)	...	Rs.8,23,224.00
15% enhancement towards future prospects	...	Rs.1,23,483.60
Annual income	...	Rs.9,46,707.60
Rounded off to	...	Rs.9,46,708.00

Income Tax Slab for Assessment Year 2016-2017

Upto Rs.2,50,000/-	-	Nil
Rs.2,50,001 to Rs.5,00,000 - 10% (Rs.2,50,000 x 10%)	-	Rs. 25,000.00

Rs.5,00,000 to Rs.10,00,000/- - 20% -
(Rs.9,46,708 – Rs.5,00,000 = Rs.4,46,708 x 20%) Rs. 89,341.60

Rs.1,14,341.60

Rounded off to Rs.1,14,342/-

Annual income after deducting income tax
(Rs.9,46,708 – Rs.1,14,342) - Rs.8,32,366/-

Hence, fixing the annual income of the deceased as Rs.8,32,366/- applying multiplier 11 and deducting 1/3rd towards personal expenses of the deceased, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.61,04,020/- [Rs.8,32,366/- x 11 x 2/3].

The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of pecuniary benefits	33,39,369/-	61,04,020/-	Enhanced
2.	Funeral expenses	15,000/-	15,000/-	Confirmed

3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	40,000/-	40,000/-	Confirmed
5.	Loss of parental consortium	80,000/-	80,000/-	Confirmed
6.	Pain & Sufferings	50,000/-	50,000/-	Confirmed
7.	Medical expenses	24,475/-	24,475/-	Confirmed
	Total	**Rs.35,63,844/-**	**Rs.63,38,495/-**	**Enhanced by Rs.27,64,651**

14. With the above modification, the Civil Miscellaneous Appeal is partly allowed and the Compensation awarded by the Tribunal at Rs.35,63,844/- is hereby enhanced to Rs.63,38,495/- together with interest at the 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The third respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposits the appellants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay the necessary Court Fee on the enhanced amount award, if any. No costs.

[V.M.V.,J] **[S.M.,J]**

03.11.2022

Index: Yes/No
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To
1.The Motor Accidents Claims Tribunal/ Special District Judge,
Erode,

2.The Section Officer
VR Section
High Court
Madras.

V.M.VELUMANI.J.
and
SUNDER MOHAN,J.

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