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Civil Miscellaneous Appeal No.1173 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1173 of 2024

1.Sahitha

W/o.Akbar

2.Minor Imran

S/o.Akbar

represented by NF/G Mother Sahitha, 1st Appellant

3.Minor Hasbiya

D/o.Akbar

represented by NF/G Mother Sahitha, 1st Appellant

4.Prem Naseer

S/o.Abdul Majith

5.Asha

W/o.Prem Naseer

... Appellants

Vs.

1.C.Asaithambi

S/o.Chinnasamy

2.National Insurance Co. Ltd.,
2nd Floor, Maruthi Complex,
F-215, Omalur Main Road,
PB No.27, Salem.

... Respondents



Civil Miscellaneous Appeal No.1173 of 2024

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.07.2022 made in M.C.O.P.No.715 of 2019 on the file of Special District Judge, MCOP Tribunal, Salem.

For Appellants : Mr.Amar D.Pandia
for Mr.M.Mohamed Riyaz

For Respondents : Mr.N.B.Surekha [R2]

JUDGMENT

The appellants/claimants, who are the wife, children and parents of the deceased Akbar, not being satisfied with the quantum of compensation awarded by the Special District Judge, MCOP Tribunal, Salem, in M.C.O.P.No.715 of 2019, dated 01.07.2022, have filed this appeal.

2. The case of the claimants is that the deceased Akbar was driving a car on 28.10.2018 at Attur - Salem main road and at about 4.45 a.m., when the car was approaching the Taluk Office, the offending vehicle, a lorry, came from the opposite direction in a rash and negligent manner



and it dashed on the car, as a result of which the deceased sustained fatal injuries and he died on the spot. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.15,15,000/- under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of income	13,50,000/-
2.	Loss of love and affection	1,00,000/-
3.	Loss of consortium	40,000/-
4.	Funeral expenses	25,000/-
	Total	15,15,000/-

The above compensation was directed to be paid along with interest at 7.5% p.a.



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4. The claimants, not being satisfied with the quantum of compensation awarded by the Tribunal, have filed this appeal seeking enhancement of compensation.

5. Heard Mr.Amar D.Pandya, learned counsel for appellants/claimants and Mr.N.B.Surekha, learned counsel for second respondent insurance company.

6. This Court carefully considered the submissions made on either side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.

8. The main ground urged by learned counsel for appellants is with regard to the notional monthly income fixed by the Tribunal. In the instant case, the deceased was aged about 36 years and the claimants came up with a case that the deceased was a driver and was earning a sum of Rs.25,000/- p.m. There was no evidence available regarding the



avocation and the monthly income earned by the deceased. The Tribunal had fixed the notional monthly income at Rs.10,000/- p.m. including future prospects, which is clearly on the lower side. Considering the fact that the accident had taken place in the year 2018 and the deceased was aged about 36 years and there are five dependents, out of which there are two minor children, this Court is inclined to fix the notional monthly income at Rs.13,500/-. Considering the age of the deceased, 40% can be added towards future prospects. Thus, the compensation under the head 'loss of income/dependency' is calculated as follows:

Monthly Income	:	Rs. 13,500/-
Add: Future Prospects	:	Rs. 5,400/-
40% of Rs.13,500/-		-----
		Rs. 18,900/-
Annual Income	:	Rs. 2,26,800/-
(18,900 * 12)		
Less : Personal expenses		
Rs.2,26,800/- * 1/4	:	Rs. 56,700/-

		Rs. 1,70,100/-
Multiplier	:	x 15

Loss of income/dependency	:	Rs.25,51,500/-



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9. The Tribunal had granted a sum of Rs.1,00,000/- under the head 'loss of love and affection' and a sum of Rs.40,000/- under the head 'loss of consortium'. The same can be consolidated into one head 'loss of love and affection' and this Court grants a sum of Rs.2,00,000/- [40,000 * 5] under this head.

10. The Tribunal had granted a sum of Rs.25,000/- towards funeral expenses and the same is reduced to Rs.15,000/-. This Court finds that no sum has been awarded towards loss of estate and hence, a sum of Rs.15,000/- is granted under this head.

11. For the foregoing reasons, the compensation awarded by the Tribunal is modified as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Loss of income	13,50,000/-	25,51,500/-
2.	Loss of love and affection	1,00,000/-	2,00,000/-
3.	Loss of consortium	40,000/-	-
4.	Funeral expenses	25,000/-	15,000/-
5.	Loss of estate	-	15,000/-
	Total	15,15,000/-	27,81,500/-



WEB COPY



Civil Miscellaneous Appeal No.1173 of 2024

12. The compensation awarded by the Tribunal at Rs.15,15,000/- is enhanced to Rs.27,81,500/-. The second respondent insurance company is directed to deposit the compensation awarded by this Court, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six (6) weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.12,66,500/- is concerned, the appellants/claimants will not be entitled for interest for the period of delay of 313 days as was ordered by this Court in C.M.P.No.463 of 2024 in C.M.A.Sr.No.941 of 2024 dated 22.03.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.



Civil Miscellaneous Appeal No.1173 of 2024

16.07.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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N.ANAND VENKATESH, J.

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To

The Special District Judge,

MCOP Tribunal, Salem.

Civil Miscellaneous Appeal No.1173 of 2024



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Civil Miscellaneous Appeal No.1173 of 2024

16.07.2024