



Civil Miscellaneous Appeal No.2623 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.2623 of 2021

1.Rasathi @ Nachayal
W/o.Subramani

2.Eswari,
S/o.Subramani

... Appellants

Vs.

1.Noby Chacko

2.Samad

3.The Branch Manager,
National Insurance Company Limited,
Mydhily Madiram, Janatha Junction,
Palarivattom,
Kochi-682 025.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.09.2019 made in M.C.O.P.No.22 of 2016 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Avinashi.

For Appellants : Mr.R.P.Ruban Chakravarthy



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for Mr.S.Kaithamalai Kumaran

For Respondents : Mr.S.Vadivel for R3

J U D G M E N T

The appellants/claimants, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Special District Court, Salem, in M.C.O.P.No.22 of 2016, dated 23.09.2019, have filed this appeal.

2. The case of the appellants/claimants is that they are the mother and sister of the deceased Velusamy. On 28.05.2012 at about 21.30 hrs, when the deceased was walking on the extreme left side of Coimbatore to Salem Main road at Pallagoudanpalayam, near bye-pass road from east to west direction, a Tempo Traveller Ambulance van bearing Registration No.KL 08 AD 1057 belonging to the second respondent came from east to west direction and was driven by its driver/first respondent in a rash and negligent manner and hit against the deceased, due to which, he sustained multiple injuries and immediately, he was brought to KMC Hospital, Perundurai, but he died. It is under



these circumstances, the appellants/claimants have filed the claim petition before the Tribunal seeking for compensation against the respondents, who are the driver, owner and insurer of the vehicle.

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 rash and negligent driving on the part of the driver of the Ambulance van. Having rendered such a finding, the Tribunal proceeded to determine the compensation payable at Rs.9,16,800/- in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of income	Rs.8,56,800/-
2.	Funeral Expenses	Rs.15,000/-
3.	Transportation Expenses	Rs.5,000/-
4.	Love and Affection	Rs.40,000/-
	Total	Rs.9,16,800/-

The Tribunal directed the above compensation to be paid by the third respondent with interest at the rate of 7.5% p.a.



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

5. Heard the learned counsel for appellants/claimants and the learned counsel for the third respondent/Insurance Company.

6. The learned counsel appearing for the appellants / claimants submitted that the deceased was an agriculturalist and milk vending powerloom worker and was earning a sum of Rs.25,000/- per month. However, the monthly income of the deceased was fixed as Rs.6,000/-. He further submitted that the compensation awarded under the head loss of love and affection is also on the lower side and the same is liable to be enhanced.

7. The first and second respondents remained ex-parte before the Tribunal.



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8. The learned counsel appearing for the third respondent submits that the Tribunal taking into consideration all the relevant documents has rightly fixed the compensation, which does not require any interference. Hence, he prays for dismissal of this appeal.

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

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

11. In the instant case, the deceased was an agriculturalist and Milk Vending Powerloom Worker and was aged about 28 years at the time of accident and was a bachelor. The accident had taken place in the year 2012. However, the monthly income of the deceased was fixed as Rs.6,000/- which is on the lower side. Hence, this Court is inclined to increase the monthly income to Rs.15,000/- p.m. If so, the loss of income/dependency would be:

Monthly Income : Rs. 15,000/-

Add: Future Prospects : Rs. 6,000/-



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40% of Rs.15,000/-

Rs. 21,000/-

Annual Income : Rs. 2,52,000/-
(21,000 * 12)

Less : Personal expenses
Rs.2,52,000/- * 1/2 : Rs. 1,26,000/-

Rs. 1,26,000/-

Multiplier : x 17

Loss of income/dependency : Rs.21,42,000/-

12. The Tribunal has not granted any amount towards loss of estate and hence, this Court is inclined to grant Rs.15,000/- towards loss of estate. Insofar as the compensation under the head love and affection is concerned, the Tribunal has awarded only a sum of Rs.40,000/- to both of them, but as laid down in *National Insurance Co. Ltd. Vs. Pranay Sethi & others (2017 (16) SCC 680)*, the amount that could be awarded under the said head is Rs.40,000/- to each of the appellants, and accordingly, the said amount is enhanced to Rs.40,000/- to each of the appellants. The compensation awarded under the other heads is just and reasonable and does not require any interference by this Court.

13. In the light of the above discussion, this Court modifies the



compensation in the following manner:

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<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Awarded by Tribunal</i>	<i>Awarded by this Court</i>
		<i>Amount (in Rs.)</i>	
1.	Loss of income	Rs.8,56,800/-	Rs.21,42,000/-
2.	Loss of love and affection (Rs.40,000/- *2)	Rs.40,000/-	Rs.80,000/-
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
4.	Transportation Expenses	Rs.5,000/-	Rs.5,000/-
5.	Loss of Estate	-	Rs.15,000/-
	Total	Rs.9,16,800/-	Rs.22,57,000/-

14. In the result, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs.9,16,800/- is hereby enhanced to Rs.22,57,000/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The third respondent is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.22 of 2016 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Avinashi.



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On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn, as per the apportionment fixed by the Tribunal by making proper application before the Tribunal. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

02.12.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

ssb

To

The Motor Accident Claims Tribunal,

Subordinate Court, Avinashi.



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M.DHANDAPANI, J

ssb

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