



CMA No.415 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 03.04.2024**

**CORAM**

**THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH**

**CMA No.415 of 2022**

1.P.Chinnammal

2.K.Revathi

3.P.Velusamy

..Petitioners/Appellants

.Vs.

1.R.Nargunavathi

2.M/s.ICICI Lombard  
General Insurance Co. Ltd.,  
Swarnambikai Plaza  
S.F.No.6/5-Plot No.7  
Ward-C, Omalur Main Road  
New Bus Stand  
Salem-636009.

..Respondents/Respondents

**Prayer :** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to enhance the compensation amount and fix entire liability on the 2<sup>nd</sup> respondent made in judgment and decree dated 24.7.2020 made in M.C.O.P.No.17 of 2019 on the file of the Motor Accident Claims Tribunal and Principal District Judge, Salem, by allowing this Civil Miscellaneous Appeal.



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For Appellants : Mr.S.P.Yuvaraj

For Respondents : Mr.M.Jayaraj for [R2]

No appearance for [R1]

### **JUDGMENT**

The claimant not being satisfied with the award passed by the Motor Accident Claims Tribunal, Principal District Judge, Salem, in MCOP.No.17 of 2019, dated 24.7.2020, has filed this claim petition seeking for enhancement of compensation.

2.On 28.5.2017 at about 6.00 pm, the deceased was driving a moped on the Salem to Namakkal NH 7 Road. The rider of the Hero Honda bike drove the vehicle in a rash and negligent manner and hit the vehicle that was driven by the deceased and caused the accident. The deceased succumbed to the injuries. The deceased died leaving behind his wife, married daughter and a son. It is under these circumstances, the claimants have filed the claim petition before the Tribunal seeking for compensation.

3.The Tribunal came to a conclusion that the 1<sup>st</sup> respondent had driven the two wheeler in a rash and negligent manner. However, since the deceased had suddenly crossed the road in his moped, the Tribunal had attributed 20% contributory negligence against the deceased and 80% negligence on the offending vehicle driven by the 1<sup>st</sup> respondent. That apart, the Tribunal had also attributed



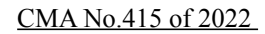
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15% contributory negligence on the ground that the deceased was not wearing helmet at the time of accident. The Tribunal ultimately fixed the total compensation payable at Rs.5,41,715/- with interest at the rate of 7.5% per annum. Not being satisfied with the compensation fixed by the Tribunal, the present appeal has been filed before this Court seeking for enhancement of compensation by the claimants.

4.Heard Mr.S.P.Yuvaraj, learned counsel for the appellants, Mr.M.Jayaraj, learned counsel for the 2<sup>nd</sup> respondent and there is no appearance either in person or through on behalf of the 1<sup>st</sup> respondent.

5.This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the award passed by the Tribunal.

6.In the considered view of this Court, the Tribunal attributing 20% contributory negligence on the deceased is well reasoned. On carefully considering the evidence of RW.1, it is seen that the deceased had suddenly crossed the road in his moped. Therefore, the finding of the Tribunal by attributing 20% contributory negligence on the deceased does not require the interference of the Court.



8. There is yet another head under which the compensation was fixed and which requires the interference of this Court. That pertains to the head of loss of income. The Tribunal has taken the notional monthly income of the deceased as Rs.7500/- pm. The deceased was eking his livelihood by working as a coolie in a poultry farm. Considering the fact that the accident had taken place in the year 2017, it will be more reasonable to fix the notional income of the deceased at Rs.12,000/- pm. If 10% is added towards future prospective, the total income will come to Rs.13,200/- pm. By applying this income, if the compensation is calculated, it will workout to a sum of Rs.17,42,400/- [Rs.13,200 x 12 x 11]. Out of this, the Tribunal has deducted 1/3<sup>rd</sup> towards the personal expenses of the deceased. Therefore, the balance 2/3<sup>rd</sup> will go to the claimants. Accordingly, a sum of Rs.11,61,600/- will go in favour of the claimants [Rs.17,42,400 x 2/3].



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9. In the light of the above discussion, the compensation payable to the claimants is fixed as follows:

| Sl.No. | Compensation awarded under the head                         | Amount<br>(in Rs.) |
|--------|-------------------------------------------------------------|--------------------|
| 1.     | Loss of income<br>[(12,000 + 1,200) x 12 x 11 x 2/3]        | Rs.11,61,600/-     |
| 2.     | Loss of love and affection<br>(Rs.10,000 x 3)               | Rs. 30,000/-       |
| 3.     | Loss of consortium for the 1 <sup>st</sup> claimant         | Rs. 20,000/-       |
| 4.     | Funeral expenses                                            | Rs. 10,000/-       |
| 5.     | Transport expenses                                          | Rs. 10,000/-       |
|        | Total                                                       | Rs.12,31,600/-     |
|        | Less: 20% contributory negligence<br><br>12,31,600 x 20/100 | Rs. 2,46,320/-     |
|        | Total                                                       | Rs. 9,85,280/-     |

10. In the result, the compensation fixed by the Tribunal is enhanced from Rs.5,41,715/- to Rs.9,85,280/- and the enhanced amount is payable by the 2<sup>nd</sup> respondent/Insurance Company with interest at the rate of Rs.7.5% per annum from the date of filing of the petition till the date of realisation within a period of six weeks from the date of receipt of copy of this judgment. The manner in which the compensation amount has to be paid has already been indicated in the award passed by the Tribunal and the same is hereby reiterated.



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**N. ANAND VENKATESH., J**  
KP

This Civil Miscellaneous Appeal is disposed of accordingly. No costs.

**03.04.2024**

Index : Yes/No  
Speaking Order/Non-Speaking Order  
Neutral citation : Yes/No  
KP

To

Motor Accident Claims Tribunal  
and Principal District Judge, Salem.

Copy to:-  
The Section Officer  
VR Section, High Court,  
Chennai.

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