



Civil Miscellaneous Appeal No.1271 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1271 of 2024

1. Senthamarai
2. Gunasekaran
3. Thangamani ... Appellants

Vs.

1. Vijayakumar
2. Thangarasu
3. The Reliance General Insurance Co. Ltd.,
Sree Lakshmi Complex, 1st Floor, Omalur Main Road,
Bharathi Street, Swarnapuri, Salem,
Branch at Thillai Nagar Main Road, II Floor,
PLA Kanagu Towers, 15-A, IInd Cross, Trichy
... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount in the order dated 10.10.2022 made in MCOP No.748 of 2020 on the file of the Motor Accident Claims Tribunal /Special District Judge Court, Salem.



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For Appellant : Mr.T.S.Arthanareeswaran
For Respondents : R1& R2 Exparte
M/s.P.Suresh Srinivasan for R3

JUDGMENT

The claimants, who are the wife and Children of the deceased Ravi, not being satisfied with the quantum of compensation awarded by the Tribunal, have filed this Appeal in MCOP No.748 of 2020 on the file of the Motor Accident Claims Tribunal /Special District Judge Court, Salem dated 10.10.2022.

2. The case of the claimant is that the deceased Ravi was traveling in a light goods vehicle at Thiruchengode to Anangoor main road and at about 7.30 p.m, when the vehicle approached Karapuliyamedu, the driver of the vehicle drove the goods vehicle in a rash and negligent manner and as a result of which, the vehicle capsized. The deceased fell down and he sustained grievous injuries and he succumbed to the injuries. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for enhancement of 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 driver of the goods vehicle drove the vehicle in a rash and negligent manner at the time of accident. However, the Tribunal also found that the deceased was traveling by sitting over the iron rod and therefore, he was also negligent. Hence, the Tribunal attributed 25% contributory negligence against the deceased and fixed the liability of the respondents at 75%. The Tribunal thereafter proceeded to fix the total compensation at Rs.7,85,000/- under various heads in the following manner :-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of income [(10,000x12x11) = 13,20,000/- - 25% (3,30,000) = 9,90,000 – 1/3 (3,30,000)]	Rs.6,60,000
2.	Loss of love and affection (20,000x3)	Rs. 60,000
3.	Loss of consortium	Rs.40,000
4.	Funeral expenses	Rs.25,000
	Total	Rs.7,85,000/-



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The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

4. The claimants not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation.

5. Heard Mr.T.S.Arthanareeswaran, learned counsel for appellants/claimants and Mr.P.Suresh Srinivasan, learned counsel for 3rd respondent.

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 learned counsel for the appellants submitted that the Tribunal ought not to have attributed 25% negligence against the



deceased since the accident itself would not have taken place if the driver of the vehicle had driven the vehicle carefully. Therefore, it was contended that the finding to that effect requires the interference of this Court.

9. Per contra, the learned counsel for respondents submitted that the deceased was not supposed to travel by sitting over the iron rod and there is certainly negligence on the part of the deceased and therefore, the Tribunal was right in fixing the contributory negligence at 25%.

10. When it comes to contributory negligence, it must be seen as to whether the concerned person has played a role and has contributed due to his negligence, causing the accident. In the instant case, if the driver of the goods vehicle had not driven the vehicle in a rash and negligent manner, the accident itself would not have taken place. That apart, it was a case where the vehicle had capsized and as a result, the deceased fell down and the iron rod fell on him. Under such circumstances, it cannot be held that the deceased had contributed



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anything towards the accident. The Tribunal had given a finding that the deceased was sitting over the iron rod and traveling in the vehicle and therefore, there was negligence on the part of the deceased. The question is not whether there was negligence on the part of the deceased and the actual question to be answered is whether the deceased contributed towards the cause of the accident. The answer to the said question is a clear “No”. Therefore, this Court is inclined to interfere with the finding of the Tribunal attributing 25% towards the negligence against the deceased.

11. The next submission that was made by the learned counsel for the appellant is with regard to the notional monthly income fixed by the Tribunal and the multiplier that was adopted by the Tribunal. The accident had taken place in the year 2020 and it was claimed that the deceased was working as a labourer in a private company and was earning Rs.16,500/- per month. There was no proof regarding the avocation or the monthly income earned by the deceased. Therefore, the Tribunal had fixed the notional monthly income at Rs.10000/- including the future prospects. This Court is of the view that the notional monthly



income fixed by the Tribunal is on the lower side. This Court is therefore inclined to fix the notional monthly income at Rs.14,000/- per month. There was some controversy regarding the age of the deceased. The Tribunal has held that since the claimants did not produce any document towards age proof, the Tribunal has fixed the age of the deceased as 50 years. This finding of the Tribunal is not supported by any reasons and fixing of age cannot be based on some assumptions. The age of the deceased is available in the post mortem certificate wherein it is mentioned that his age was 47 years. There was no document or material contradicting this age shown in the post mortem certificate. Therefore, it can be safely taken that the age of the deceased is 47 years.

12. This Court having fixed the age of the deceased as 47 years, holds that 25% can be added towards future prospects. Thus, the notional monthly income can be fixed at Rs.14,000/- + (3500/-) 25% =Rs.17,500/- The Tribunal has taken the age of the deceased as 50 years and has adopted 11 multiplier. Since this Court has fixed the age of the deceased as 47 years, 13 multiplier is adopted. Thus, the compensation under the head of loss of income is calculated as follows :-



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$$\begin{aligned}\text{Loss of Income} &= 14,000 + 25\%(3,500) = 17500/- \\ &= 17500 \times 12 \times 13 \times \frac{2}{3} \\ &= 18,20,052/-\end{aligned}$$

13. The Tribunal has granted a sum of Rs.40,000/- towards the loss of consortium to the wife of the deceased and Rs.60,000/- to all the claimants under the head of loss of love and affection. This Court is inclined to consolidate the compensation under the head of consortium to wife and loss of love and affection to children at Rs.1,20,000/- (Rs.40,000/- each x 3).

14. The Tribunal has not granted any compensation under the loss of estate and this Court is inclined to fix a sum of Rs.15000/- and the compensation fixed under the head of funeral expenses is reduced from Rs.25,000/- to Rs.15,000/-.

15. 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>Amount (in Rs.)</i>
1.	Loss of dependency (14,000 /-+ 25% 3,500/-) =17,500/-x 2/3 =11,667 x 12 x 13	Rs.18,20,052/-
2.	Loss of Consortium to wife	Rs.40,000/-
3.	Loss of Love and affection to Children 40,000 x 2	Rs.80,000/-
4.	Loss of estate	Rs.15,000/-
5.	Funeral expenses	Rs.15,000/-
	Total	Rs.19,70,052/-

16. The compensation awarded by the Tribunal at Rs.7,85,000 is enhanced to Rs.19,70,052/-. The Insurance company is directed to deposit the enhanced compensation, 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 four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.11,85,052/- is concerned, the appellants/claimants will not be entitled for interest for the period of delay of 225 days as was ordered by this Court in C.M.P.No.8246 of 2024, dated 30.04.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard



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to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

14.06.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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N.ANAND VENKATESH.,J

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Motor Accident Claims Tribunal /Special District Judge Court, Salem.

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