



CMA No.1188 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1188 of 2024

1.Vasanthi

2.Kumutharani

3.Karthikeyan

4.Gowsalya

5.Palaniammal

.. Appellants

.Vs.

1.D.Velusamy

2.M/s. United India Insurance Co.,Ltd.,

Issuing Office at Mp/14/1-77B

Salem main Road

Puduchampalli, Raman Nagar PO

Mettur Dam, Salem.

Having Divisional Office at No.1, TP Hub

No.104-A, Ranga Building

Peramanur Main Road

Near Four Road, Peramanur

Salem.

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount awarded by the Tribunal in M.C.O.P.No.139 of 2022, dated 01.08.2023, on the file of the Motor Accident Claims Tribunal/Special District Judge, MCOP Tribunal, Salem.



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For Appellants : Mr.R.Navaneetha Krishnan

For Respondents : Mrs.I.Malar for R2

For R1 set ex-parte

JUDGMENT

The claimants who are the wife, son, daughters and mother of the deceased Palaniyappan, not being satisfied with the quantum of compensation, have filed the present appeal against the award passed by the Motor Accident Claims Tribunal/Special District Judge, MCOP Tribunal, Salem, in MCOP No.139 of 2022, dated 01.08.2023.

2.The case of the claimants is that the deceased Palaniyappan was riding two wheeler on 06.10.2021 at Omalur-Mecheri Main Road and at about 18.30 hours, when this vehicle was going near a grocery shop, the offending vehicle which came in the opposite direction was driven in a rash and negligent manner and it dashed on the two wheeler as a result of which, the deceased was thrown out of the vehicle and he succumbed to the injuries on the next day. It is under these circumstances, the claim petition came to be filed seeking for payment of compensation.



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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.

4. The Tribunal after having rendered such a finding, proceeded to fix the compensation under various heads as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income [(10,000x12x13 = 15,60,000/- - 1/4 (3,90,000)]	11,70,000/-
2.	Loss of love and affection (20,000x5)	1,00,000/-
3.	Loss of consortium	40,000/-
4.	Funeral Expenses	25,000/-
	Total	13,35,000/-

5.The above compensation was directed to be paid with interest at the rate of 7.5% p.a.

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



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7. Heard Mr.R.Navaneetha Krishnan, learned counsel for the appellants and Mrs.I.Malar, learned counsel for R2 – Insurance Company.

8. 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.

9. The main ground that was raised by the learned counsel for the appellants pertains to the notional monthly income that was fixed by the Tribunal while calculating the compensation under the head loss of income. The claimants came up with a plea that the deceased was an agriculturist and he was earning an income of Rs.24,000/- p.m. There was no evidence available before the Tribunal on the occupation or the income earned by the deceased. The Tribunal proceeded to fix the notional monthly income of Rs.10,000/- including 25% future prospects. This notional income fixed by the Tribunal is certainly on the lower side.

10. The learned counsel for the insurance company submitted that there was absolutely no evidence available to substantiate the occupation of the deceased or the monthly income earned by him. In any case, the claimants came up with a plea that the deceased was an agriculturist. Therefore, even if



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this Court is inclined to increase the notional monthly income, it cannot exceed a sum of Rs.13,000/- per month.

11.The accident had taken place in the year 2021 and the deceased was aged about 49 years and there were atleast five claimants who were dependent on the deceased. Hence, 25% can be deducted towards personal expenditure of the deceased. In view of the same, this Court is inclined to fix the notional monthly income of the deceased at Rs.15,000/-. Thus, the compensation under the head loss of income/dependency is calculated as follows:

Monthly income fixed	:	Rs.15,000/-
Future prospects to be added	:	25%
Notional monthly income arrived at	:	Rs.15,000/- + 25%
		Rs. 3,750/-

		Rs.18,750/-
Multiplier to be adopted	:	13

Loss of income/dependency : $15000 + 25\% \text{ FP} \times 12 \times 13 - 1/4$

$$15,000 + 3750 * 12 * 13 - 1/4$$

$$29,25,000 - 7,31,250 = 21,93,750/-$$



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12.The Tribunal has 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'. This Court is inclined to consolidate both these heads and grant compensation of a sum of Rs.2,00,000/- under the head 'loss of love and affection'.

13.The Tribunal has granted a sum of Rs.25,000/- under the head 'funeral expenses'. This is certainly on the higher side and the same is reduced to Rs.15,000/-. The Tribunal has not granted any compensation under the head 'loss of estate' and this Court is inclined to fix a sum of Rs.15,000/- under this head.

14.In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income	21,93,750/-
2.	Loss of love and affection (40,000x5)	2,00,000/-
3.	Funeral Expenses	15,000/-
4.	Loss of Estate	15,000 /-
	Total	24,23,750/-



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15.In the result, the compensation fixed by the Tribunal is enhanced from Rs.13,35,000/- to Rs.24,23,750/- and the enhanced amount is payable by the 2nd respondent/Insurance Company with interest at the rate of 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. Insofar as the enhanced compensation of Rs.10,88,750/- is concerned, the appellants/claimants will not be entitled for interest for the delay period of 110 days as was ordered by this Court in CMP.No.8135 of 2024 dated 29.04.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants/claimants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

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

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Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
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N. ANAND VENKATESH., J
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To

1.M/s. United India Insurance Co.,Ltd.,
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2.Motor Accident Claims Tribunal/
Special District Judge,
MCOP Tribunal, Salem.

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