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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1673 of 2024

1.Poongodi

2.Subramani

... Appellants

.VS.

1.The Secretary,
Muthayammal College of Arts and Science,
Kakkaveri Post, Rasipuram Taluk,
Namakkal District.

2.Raheja Qbe General Insurance Co., Ltd.,
5th Floor, Windsor House, CST Road,
Kalina, Santacruz (E),
Mumbai - 400 098.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in MCOP No.262 of 2018, dated 18.08.2023 on the file of Motor Accident Claims Tribunal, Subordinate Judge, Sankagiri.

For Appellant : Mr.R.Navaneetha Krishnan

For Respondent : Mr.S.Arunkumar for R2



JUDGMENT

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The claimants who are the parents of the deceased not being satisfied with the quantum of compensation awarded by the Tribunal in MCOP No.262 of 2018, dated 18.08.2023, have filed this appeal seeking for enhancement of compensation.

2.The case of the claimants is that the deceased Manigandan was riding a two wheeler on 09.07.2018, at Kalipatti-Vaigundam Mukkonam road and at about 7.50 a.m., when the two wheeler approached the scene of occurrence, the offending vehicle which was a College bus was driven in a rash and negligent manner and dashed on the two wheeler. As a result of which, the deceased died on the spot. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment 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 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 attributed 20% contributory negligence against the deceased on the ground that there was no proof that the deceased possessed a valid driving license. Only



80% negligence was attributed against the offending vehicle. The Tribunal, thereafter, proceeded to determine the compensation and awarded total compensation of Rs.18,63,900/- in the following manner:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income/Dependency	18,14,400
2.	Loss of Love and Affection	33,000
3.	Funeral Expenses	16,500
	Total	18,63,900
	80% Compensation payable	14,91,120

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

5.The claimants not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal before this Court seeking for enhancement of compensation.

6.Heard Mr.R.Navaneetha Krishnan, learned counsel appearing on behalf of the appellants and Mr.S.Arunkumar, learned counsel appearing on behalf of the 2nd respondent.

7.This Court has carefully considered the submissions made on either side



and also the materials available on record.

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8.The 1st issue is with regard to the 20% contributory negligence attributed by the Tribunal against the deceased. The Tribunal has come 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 come to such conclusion, the Tribunal has attributed 20% contributory negligence against the deceased only on the ground that he did not possess a valid driving license. It is now too well settled that the mere non-possession of the driving license is not a ground to assume that there was contributory negligence unless it is proved before the Tribunal. Useful reference can be made to the judgment of the Apex Court in ***Dinesh Kumar J. alias Dinesh J. v. National Insurance Company Limited and others*** [2018 (1) SCC 750].

9.In view of the above, the finding of the Tribunal attributing 20% contributory negligence against the deceased is hereby set aside.

10.Insofar as the quantum of compensation is concerned, it is seen that the deceased was a B.Tech., graduate and he was aged about 22 years at the time of the demise and he was doing business. There was no proof regarding the



occupation of the deceased and the monthly income earned by him. The Tribunal has fixed the notional monthly income at Rs.12,000/-. This is clearly on the lower side. Considering the educational qualification of the deceased and the fact that the accident had taken place in the year 2018 and the parents of the deceased had no one else to take care of them in their old age, this Court is inclined to fix a sum of Rs.16,000/- towards notional monthly income. 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:

$$\text{Rs.}22,400 \times 12 \times 18 \times 1/2 = \text{Rs.}24,19,200/-$$

11.The Tribunal has granted only a sum of Rs.33,000/- under the head of loss of love and affection. This Court is inclined to enhance the same to Rs.80,000/- (Rs.40,000 x 2). The Tribunal has not granted any compensation under the head of loss of estate and this Court is inclined to grant Rs.15,000/- under this head.

12.In the light of the above discussion, the compensation awarded by the tribunal is modified as follows:



S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income/Dependency	24,19,200
2.	Loss of Love and Affection	80,000
3.	Funeral Expenses	16,500
4.	Loss of Estate	15,000
	Total	25,30,700

13.The compensation awarded by the tribunal at Rs.14,91,120/- is enhanced to Rs.25,30,700/-. The second respondent 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.10,39,580/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay period of 120 days as was ordered by this Court in C.M.P.No.7336 of 2024, dated 07.06.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the claimants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.



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

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

To

The Motor Accident Claims Tribunal, Subordinate Judge, Sankagiri.



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N. ANAND VENKATESH., J

SSR

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