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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1831 of 2024

1.P.Santhana Lakshmi
2.P.Ganesh Priyan
3.P.Shanmuga Priyan
4.P.Jaya Priyadharshini ... Appellants

.vs.

1.V.Roshan Dev

2.The New India Assurance Co., Ltd,
N.232, NSC Bose Road, Bombay Mutual Building,
Broadway,
Chennai – 01. ..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order dated 10.03.2023 made in MACTOP No.59 of 2022 on the file of the Motor Accident Claims Tribunal, Special District Court to deal with MCOP Cases No.1, Tiruvallur.

For Appellants : Ms.A.Subadra

For Respondents : Mr.A.Ganesh for R1
Mr.J.Chandran for R2

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JUDGMENT

The claimants not being satisfied with the quantum of compensation awarded by the Tribunal in MACTOP No.59 of 2022, dated 10.03.2023, have filed this appeal seeking for enhancement of compensation.

2.The claimants who are the wife, two sons and daughter of the deceased Purushothaman filed the claim petition on the ground that the deceased Purushothaman was riding a two wheeler on 08.05.2022 at GST Road and at about 01.30 p.m., when the vehicle came near the Alandur bus depot, the offending vehicle which was also a two wheeler was driven in a rash and negligent manner and it dashed on the rear side of the vehicle in which the deceased was travelling. As a result of which, the deceased was thrown out of the vehicle and he sustained grievous injuries. Unfortunately, he succumbed to the injuries. An FIR came to be registered against the rider of the offending vehicle in Crime No.91 of 2022. 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 rider of the two wheeler. The Tribunal having rendered this finding, attributed 10% contributory negligence against the deceased on the ground that the deceased was not wearing a helmet and the cause of death was the head injury sustained by the deceased.

4.The Tribunal thereafter proceeded to fix the total compensation at Rs.11,42,758/- under various heads as follows:

S.No	**Compensation awarded under the head**	**Amount (in Rs.)**
1.	Loss of Dependency (Rs.11,978 x 12 x 7 = 10,06,152)	10,06,152
2.	Loss of Estate	16,500
3.	Loss of Consortium	1,76,000
4.	Funeral Expenses	16,500
5.	Medical Bills	54,579
	Total	**12,69,731**
	Less 10% deduction	**11,42,758**

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

6.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.

7.Heard Ms.Subadra, learned counsel appearing on behalf of the appellant, Mr.A.Ganesh, learned counsel appearing on behalf of the 1st respondent and Mr.J.Chandran, learned counsel appearing on behalf of the 2nd respondent.

8.This Court has carefully considered the submissions made on either side and also the materials available on record.

9.The main ground of challenge in this appeal pertains to the monthly income that was fixed by the Tribunal while calculating the compensation under the head of loss of dependency. The Tribunal had taken into consideration Ex.P22 which pertained to the income tax returns for the assessment years 2018-2022. The Tribunal on calculation of the income came to a conclusion that the monthly income of the deceased was roughly Rs.21,293/-. Having reached that conclusion, the Tribunal took only 75% out of this income on the ground that there was no proof to show that the business itself was closed after the demise of the deceased.

10.In the instant case, accident had taken place on 08.05.2022. Therefore, even if there was no proof of income, this Court would have fixed the notional monthly income around Rs.20,000/-. However, sufficient documents have been filed before the Tribunal. It must be borne in my mind that apart from the two sons, the wife and the unmarried daughter were also claimants in this case. Therefore, this Court is inclined to fix the notional monthly income at Rs.21,300/-

11.The age of the deceased was fixed at 65 years by the Tribunal based on the Postmortem Certificate. However, it is clear from the income tax returns that the age of the age was 66 years. Therefore, only 5 multiplier can be applied. In view of the same, the compensation under the head of loss of dependency is calculated as follows:

Rs.21,300 x 12 x 5 x 1/4 = Rs.9,58,500/-

12.The compensation that has been fixed under the other heads are reasonable and does not require the interference of this Court.

13.The last issue is with regard to attributing 10% contributory negligence against the deceased. The Tribunal has come to a categoric conclusion that the accident had taken place only due to the rash and negligent driving on the part of the rider of the two wheeler. It is also seen that the offending vehicle had hit the vehicle in which the deceased was travelling from behind. Therefore, just because the deceased was not wearing a helmet, contributory negligence cannot be automatically attributed against the deceased. Therefore, this Court is inclined to interfere with the finding of the Tribunal attributing 10% contributory negligence against the deceased, and the same is hereby set aside.

14.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 Dependency (Rs.21,300 x 12 x 5 x 1/4 = Rs.9,58,500/-)	9,58,500
2.	Loss of Estate	16,500
3.	Loss of Consortium	1,76,000
4.	Funeral Expenses	16,500
5.	Medical Bills	54,579
	Total	**12,22,079**

15.The compensation awarded by the tribunal at Rs.11,42,758/- is enhanced to Rs.12,22,079/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.12,22,079/-, 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.79,321/- is concerned, the appellants/claimants will not be entitled for interest for the period of delay period of 276 days as was ordered by this Court in C.M.P.No.10033 of 2024, dated 05.07.2024. 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.

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N. ANAND VENKATESH., J

ssr

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

31.07.2024

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

The Motor Accident Claims Tribunal,
Special District Court to deal with MCOP Cases No.1, Tiruvallur.

CMA No.1831 of 2024