IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1667 of 2024

1. Mrs.E.Malar

2. Mr.Elumalai ... Appellants

Vs.

1. Mr.Shahul Hameed

2. The Manager,
United India Insurance Co Ltd.,
Motor Third Party Hub
1st Floor, 43/397-A,
Annasalai, Gandhi Street,
Rajaji Puram Part 2
Thiruvallur,
Chennai 600 011 ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order made in M.A.C.T.O.P.No.77 of 2020 dated 14.09.2021, on the file of the Motor Accident Claims Tribunal, Special District Court to deal with Motor Accidents Claims Tribunal No.1, Tiruvallur.

For Appellant : Mrs.A.Subadra

For Respondents : M/s.R.Rathna Thara for R2

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JUDGMENT

The claimants, who are the parents of the deceased Manikandan, not being satisfied with the quantum of compensation awarded by the Tribunal have filed this appeal challenging the award passed by Motor Accidents Claims Tribunal No.1, Tiruvallur in M.A.C.T.O.P.No.77 of 2020 dated 14.09.2021.

2. The case of the claimants is that the deceased Manikandan was riding a two wheeler on 27.07.2020 at Sholinganallur and at about 8.30 a.m, near Infosys company, the offending vehicle which was a Auto was driven in a rash and negligent manner and it hit the two wheeler from behind. As a result of which, the deceased was thrown out of the vehicle 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 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 Auto rickshaw.

4. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.16,02,656/- under various heads as follows :-

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Loss of earning of the deceased	Rs.15,22,656/-
2.	Loss of estate	Rs. 15,000/-
3.	Loss of Consortium	Rs. 40,000/-
4.	Funeral expenses	Rs. 15,000/-
5.	Transport to hospital expenses	Rs. 10,000/-
	Total	**Rs.16,02,656/-**

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

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

7. Heard Mrs.A.Subadra, learned counsel for appellants/claimants and M/s.R.Rathna Thara, learned counsel for 2nd respondent/Insurance company.

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

9. This Court also carefully went through the award passed by the Tribunal.

10. The bone of contention is with regard to the monthly income that was fixed by the Tribunal at Rs.10,663/-.

11. The claimants came up with a case that the deceased was working in a private concern and he was earning a salary of not less than Rs.20,000/- per month. In order to substantiate the same, PW3, who was the accountant in that company was examined on the side of the claimants and Ex.P20 series was marked. The Tribunal came to a conclusion that the gross salary shown was Rs.20,000/- and during the month of May and June 2020, the net salary was around Rs.10,000/- and take home salary was Rs.10,663/-. In view of the same, the Tribunal has fixed a sum of Rs.10,663/- as the monthly salary of the deceased.

12. It must be borne in mind that the period during which the accident had taken place was the pandemic period. Most of the private companies were either retrenching the employees or were retaining the employees by paying them half of the salary. Therefore, the Tribunal ought not to have taken into consideration the salary that was drawn by the deceased during May and June 2020, when the pandemic was at its peak.

13. There is yet another angle in which this issue can be looked

at. If in case the claimants were not able to prove before the Tribunal regarding the avocation of the deceased and the monthly salary earned by him, considering the fact that the accident had taken place in the year 2020, this Court is inclined to fix the notional monthly income at Rs.17,000/- like in all the other cases. Therefore, just because the claimants were honest enough to come before the Tribunal and examine PW3 and also marked the salary slips, they should not be punished for that honesty. Therefore, this Court is inclined to enhance the monthly salary of the deceased to Rs.17,000/-. 40% can be added towards future prospects, considering the fact that the deceased was aged about 28 years at the time of his demise. Thus, the compensation under the head of loss of income / dependency is calculated as follows:-

Monthly notional income	Rs. 17,000/-
Add 40% future prospects	Rs. 6,800/-
	Rs. 15,625/-
Loss of dependency	=Rs.23,800 x 12 x 17 x 1/2
	= Rs.24,27,600/-

14. The other head of compensation that requires the interference of this Court, is the head of loss of consortium. This Court is inclined to fix a sum of Rs.80,000 (2 x 40,000/-) towards loss of "love

and affection" instead of "loss of consortium".

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

15. In the light of the above discussion, this Court modifies the compensation in the following manner:-

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Loss of earning of the deceased	Rs.24,27,600/-
2.	Loss of estate	Rs. 15,000/-
3.	Loss of love and affection	Rs. 80,000/-
4.	Funeral expenses	Rs. 15,000/-
5.	Transport to hospital expenses	Rs. 10,000/-
	Total	**Rs.25,47,600/-**

16. The compensation awarded by the Tribunal at Rs.16,02,656/- is enhanced to Rs.25,47,600/-. 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.9,44,944/- (rounded of to Rs.9,45,000/-) is concerned, the appellants/claimants will not be entitled for interest for the period of delay of 400 days as was ordered by this Court in C.M.P.No.21683 of 2023, dated 18.06.2024. 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 to the mode of payment of compensation remains unaltered.

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

16.07.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
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To, Motor Accidents Claims Tribunal No.1, Tiruvallur.

N.ANAND VENKATESH.,J

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