



CMA.No.759 of 2024

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DATED : 01.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.759 of 2024
and C.M.P.No.7043 of 2024

M/s.IFFCO Tokio General Insurance
Company Limited, 'IFFCO Bhavan',
IV Floor, No.128, Habibulla Road,
T.Nagar, Chennai-17.

...Appellant

Vs.

1. Geetha
2. Ashok Kumar
3. Thaiyalnayagi
4. Raliya Banu
5. Mukundan

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor
Vehicles Act, 1988 praying to set aside the award dated 24.9.2019
passed in MCOP No.194 of 2016 on the file of the Special District Court
for MCOP cases (Motor Accidents Claims Tribunal) at Villupuram.

For Appellant : Mr.J.Michael Visuvasam
For Respondents : Mr.E.C.Ramesh for R1 to R3



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JUDGMENT

This Civil Miscellaneous appeal has been filed by the Insurance Company challenging the award passed in MCOP No.194 of 2016 dated 24.9.2019 on the file of the Special District Court for MCOP cases (Motor Accidents Claims Tribunal) at Villupuram (for short, the Tribunal below).

2. The case leading to filing of this appeal is as follows :

(i) One Ms.Radhika is said to have traveled in a two wheeler with one Minor Yuvasri, who is none other than her niece, on 31.1.2016. Both of them were said to have gone to the nearby relative's house and while returning, they were waiting in the two wheeler so as to cross Trichy to Chennai Highways. At that time, the offending vehicle was driven in a rash and negligent manner and it dashed against the two wheeler and as a result, both the said Ms.Radhika and Minor Yuvasri were thrown out of the vehicle and thereby they sustained injuries. Both of them were taken to Villupuram Government Medical College & Hospital at



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Mudiyambakkam where both of them were declared dead.

(ii) The mother, the elder brother and the grand mother are the claimants, who filed MCOP.No.194 of 2016 before the Tribunal below seeking for compensation.

(iii) The Tribunal below came to a conclusion that the entire incident had taken place only due to the rash and negligent driving by the driver of the offending vehicle. Having rendered such a finding as to negligence, the Tribunal had fixed the compensation at Rs.22,26,000/- with interest at the rate of 7.5% per annum payable by the insurance company to claimants 1 and 2/respondents 1 and 2. Aggrieved by this award, the insurance company has filed this appeal before this Court.

3. Heard Mr.J.Michael Visuvasam, learned counsel for the appellant and Mr.E.C.Ramesh, learned counsel appearing for respondents 1 to 3.

4. The learned counsel for the appellant primarily raised three grounds. The 1st ground that was raised by the learned counsel for



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appellant is that the Tribunal below, instead of deducting 50% towards the personal expenses, erroneously deducted 1/3rd amount towards personal expenses while determining the compensation under the head 'loss of dependency'. The next ground that was raised is that the Tribunal below had erroneously fixed the income of the deceased at Rs.14,000/- without any discussion, when admittedly the deceased was only a student at the time of accident. The learned counsel further submitted that the Tribunal below, after having fixed the compensation under the head 'consortium', ought not to have fixed the compensation under the head 'love and affection', since both these heads cannot go together.

5. Per contra, the learned counsel appearing for the claimants submitted that the Tribunal below assigned proper reasons while fixing the compensation and that the same do not require the interference of this Court. He further submitted that the at the time of accident, the mother of the deceased was a widow and the brother of the deceased was unmarried. Therefore, the Tribunal below had rightly deducted 1/3rd amount towards personal expenses and allowed 2/3rd amount towards



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contribution to the family.

6. This Court has carefully considered the submissions made on either side and also perused the materials available on record. This Court also carefully considered the award that was passed by the Tribunal .

7. In the instant case, the deceased, at the time of accident, was a student. She was not earning any income during the relevant point of time. Therefore, the Tribunal below ought to have taken into consideration the fact that the widowed mother and the unmarried brother were not dependent on the deceased. The Tribunal below was only fixing a notional income of the deceased and therefore, the Tribunal below ought to have deducted 50% towards the personal expenses of the deceased instead of 1/3rd amount. Apart from the above, the Tribunal below ought not to have granted compensation both under the heads 'loss of consortium' and 'love and affection'. The law on this issue is now too well settled.



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

"i. In so far as the head 'loss of dependency' is concerned, the notional monthly income is taken as Rs.10,000/- and if 40% future prospects are added to it, the total works out to Rs.14,000/- per month. If 50% is deducted towards personal expenses, it works out to Rs.7,000/-. Hence, the compensation under the head 'loss of dependency' can be calculated at Rs.7,000 by adopting 18 as the multiplier, the total amount works out to Rs.15,12,000/- (Rs.7000/- x 12 x 18).

ii. In so far as the head 'loss of consortium is concerned, the compensation amount that was fixed by the Tribunal is set-aside.

iii. Thus, the total compensation is fixed as follows :-

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Dependency Rs.7,000 x 12 x 18	15,12,000/-
2.	Love and affection	1,00,000/-
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	16,42,000/-

The above compensation shall be paid with interest at the rate of 7.5%



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per annum from the date of petition till the date of realization. The other conditions imposed by the Tribunal below with respect to the manner, in which, the compensation has to be paid, are sustained as such.

9. It is submitted that the appellant has already deposited the entire amount, as per the award passed by the Tribunal. Hence, the Tribunal is directed to permit the withdrawal of the amount, as per the modified award passed by this Court together with proportionate interest and costs, within a period of two weeks from the date of receipt of a copy of this order. The balance amount, shall be refunded to the appellant insurance company.

10. In the result, this Civil miscellaneous appeal is partly allowed, reducing the compensation awarded by the Tribunal from Rs.22,26,000/- to 16,42,000/-. No costs. Consequently, the connected CMP is closed.

01.04.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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N.ANAND VENKATESH, J.

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To
The Special District Court for MCOP
cases (Motor Accidents Claims Tribunal)
at Villupuram.

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