



C.M.A.No.2343 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 07.02.2024

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

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- 1.Vennila
- 2.Minor Maniyarasan
- 3.Minor Sainthavi
- 4.Kuppayee
- 5.Ramasamy

... Appellants

Versus

- 1.B.Muhamaduyasin
- 2.The Manager,
Cholamandalam
Ms General Insurance Company Limited
103/1, Peramannur Main Road, Salem.

- 3.S.Ezhumalai

... Respondents

PRAYER: Civil Miscellaneous Appeals filed under Order 173 of Motor Vehicles Act, against the judgement and decree dated 18.03.2021 in M.C.O.P.No.61 of 2019 on the file of the Motor Accidents Claims Tribunal (Sub Judge), Rasipuram.

For Appellants : Ms.D.Jeevitha
for M/s.R.Nalliyappan



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For RR1 : No appearance
For R2 : Mr.K.Vinod
For R3 : Notice dispensed with

JUDGMENT

This civil miscellaneous appeal is directed as against the award of the Motor Accident Claims Tribunal, Sub Judge, Ramanathapuram, dated 27.01.2019 in M.C.O.P.No.61 of 2019.

2.The brief facts of the case is that, at about 12.30pm in between mettalar to mukudichi main road,opposite to the Maha workshop, the deceased was driving his TVS motorcycle bearing Registration No. TN 28 AT 8705. At that time the 1st respondent vehicle namely Mahendira Maxi cab bearing Registration TN 26 AE 2079 was driven by the 1st respondent in a rash and negligent manner, without observing road traffic rules, suddenly, hit the deceased. Due to the accident the deceased has sustained fatal injuries and died on the spot. The accident occurred only due to rash and negligent driving of the driver of the Mahendira Maxi cab. The Pallipatti police station registered the FIR in Crime No.14/2019 under Section 279, 304 A of IPC, against the driver of the Maxi cab. It is



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further submitted that the deceased was working as labour in a poultry farm and was earning a sum of Rs.20,000/- per month, at the time of the accident. Accordingly claim for compensation for a sum of Rs.35,00,000/- has been made by the legal heirs of the deceased.

3.The claim of the petitioners was resisted by the 2nd respondent/Insurance Company by stating that the alleged accident did not take place as alleged in the petition. When the deceased was riding a two wheeler bearing Registration No.TN 28 AT 7905 on Mettalar to Mullukurichi main road, opposite to Maha Workshop, at that time one Maxi cab bearing Registration No. TN 23 AE 2079 came in the opposite direction, in the meantime the deceased suddenly tried to cross the road from left to right without minding the on-coming vehicle and invited the accident. The age, occupation and the alleged income of the deceased at the time of accident was also denied. It is further submitted that the driver of the Maxi cab had no valid driving license at the time of accident and therefore, the 2nd respondent is not liable to pay the compensation. Accordingly, the claims Tribunal framed the following issues for consideration.



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1. Whether the accident occurred due to the rash and negligence driving the driver of the 1st respondent'? Who is liable to pay the compensation?

2. Whether the petitioners are entitled to the claim as prayed for and if s what is the quantum?

3. Whether the petitioners are entitled to any other relief?

4.The Tribunal came to the conclusion that the accident took place as alleged in the claim petition and the claimants are entitled to claim compensation to be jointly and severally from the respondents 1 and 2 namely the owner and insurer of the offending vehicle. Accordingly, the compensation of Rs.17,17,800/- has been awarded along with the interest at the rate of 7.5% per annum.

5. Aggrieved by this, the claimants have preferred the present appeal. Through this appeal, award has been challenged on the ground, namely, just compensation has not been awarded and therefore, the compensation awarded by the Tribunal has to be enhanced. According to the appellants/claimants the awarded amount is very meager. At the time of the accident, the deceased was aged about 33 years and was working



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in Shakty poultry farm and was earning a sum of Rs.14,000/- per month.

However, the Tribunal fixed the monthly income of the deceased as Rs.8000/- which is very low. The learned counsel for the appellant further contended that no amount was granted towards love and affection for the children and parents. The further contention of the learned counsel is that a meager amount is awarded towards funeral expenses and loss of estate.

5. There is no dispute with regard to taking place of accident, has alleged by the claimants, but for rash and negligent driving of the vehicle, it would not have taken place. Finding recorded by the learned claims Tribunal is, therefore, sustained.

6. There is dispute with regard to the income of the deceased. The owner of the poultry farm in which the deceased was working at the time of accident was examined as P.W.3. The salary certificate of the deceased was marked as Ex.X1. P.W.3 in his evidence and through Ex.X.1 has stated that the deceased was receiving a sum of Rs.14,000/- per month at the time of accident. However, the Tribunal, in the absence of any rebuttable evidence, fixed the monthly salary of the deceased at



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Rs.8000/- which requires interference. In the absence of any contra evidence, the monthly income of the deceased as per Ex.X1 is fixed at Rs.14,000/- .

7. The Tribunal failed to award compensation towards filial and parental consortium and a sum of Rs.1,60,000/- is awarded for the same. While granting compensation towards consortium, the Tribunal has erroneously awarded a sum of Rs.30,000/- towards loss of spouse and the same is liable to be set aside. The compensation awarded under the heads of Transportation, loss of estate and funeral expenses is confirmed.

8. Therefore, this Court finds it reasonable to enhance the compensation under various heads, which are as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pecuniary loss	16,12,800	28,22,400	12,09,600
2.	Funeral Expenses	15,000	15,000	-
3.	Consortium	40,000	2,00,000	1,60,000
4.	Loss of Estate	15,000	1,50,000	-
5.	Loss of spouse	30,000	-	-
6.	Transportation	5000	5000	-
	Total	17,17,800	30,57,400	13,39,600



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9. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,17,800/- is hereby enhanced to Rs.30,57,400/- together with interest at 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of a receipt of copy of this Judgment. On such deposit the appellant is permitted to withdraw the entire amount awarded by the Tribunal along with interest and cost, less the amount already withdrawn, if any. The appellant is directed to pay the necessary Court fee, if any for the enhanced award amount. No costs.

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vsn

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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WEB COPY **To:**

- 1.The Sub Judge,
Motor Accident Claims Tribunal,
Rasipuram.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.

vsn

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