



C.M.A.No.2016 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 14.06.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

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1.Ramalakshmi

2.Chellammal

3.Selva Kumar

4.Selva Kandasamy

5.Selva Ganesan

6.Minor. Selvaragavan

.. Appellants

(Minor 6th appellant represented by his
Mother & Natural Guardian, 1st appellant)

Vs.

1.Jakir Hussain

2.The ICICI Lombard General Insurance Co. Ltd.,
No.142, 1st Floor, ECR Main Road,
Near Latha Steel House, Kottupalayam,
Pondicherry – 605 008.

3.R.Udhaya Kumar

.. Respondents

(R1 & R3 remained exparte before the Tribunal.
Hence, their presence dispensed with)



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Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the award against the judgment and decree dated 03.08.2022 made in M.C.O.P.No.7 of 2022 on the file of the Motor Accident Claims Tribunal No.1, Special District Court to deal with MCOP cases, Thiruvallur.

For Appellants : Ms.A.Subadra

For RR 1 & 3 : Exparte

For R2 : Ms.A.Salomi

J U D G M E N T

The claimants who are the wife and children of the deceased Perumal, not being satisfied with the quantum of compensation fixed by the Tribunal have filed this appeal against the award passed by the Motor Accident Claims Tribunal No.1, Special District Court to deal with MCOP cases, Thiruvallur, in M.C.O.P.No.7 of 2022 dated 03.08.2022.

2.The case of the claimants is that the deceased Perumal was riding a two wheeler on 28.11.2021 at Kunrathur to Sriperumpudur main road and at about 1.45 PM in front of Kunrathur Anjutham Nagar, the 1st respondent was driving his two wheeler in a rash and negligent manner



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and he hit the two wheeler driven by the deceased and as a result, the deceased was thrown out and he sustained multiple grievous injuries and he died on 29.11.2021. It is under these circumstances, the claim petition came to be filed before the Tribunal.

3.The Tribunal considering the facts and circumstances of the case and based on the 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 offending vehicle driven by the 1st respondent. Having rendered such a finding, the Tribunal proceeded to fix the total compensation of Rs.9,68,000/- under various heads as follows:

Loss of Dependency	of Rs.10,000 (add 10% future prospects) = 10,000 + 1000 = 11,000 (1/4 th deduction of personal expenses) = 11,000 – 2,750 = 9375 per month = 8250 X 12 (Annual income) X 9 (multiplier) = Rs.8,91,000/-	8,91,000
Loss of Estate	16,500	16,500
Loss of consortium	44,000	44,000
Funeral expenses	16,500	16,500
	Total	9,68,000



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

5.The Tribunal found that the rider of the offending vehicle did not possess a valid driving license and therefore, the Tribunal applied the pay and recover method in this case.

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 the learned counsel for the appellants and the learned counsel for the 2nd respondent.

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

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



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10.The main thrust of the arguments on the side of the appellants is that the Tribunal has fixed the notional monthly income at Rs.10,000/-, which is on the lower side. That apart, it was also contended that no compensation has been given under the head of loss of love and affection for the children of the deceased.

11.In the instant case, the claimants came up with a plea that the deceased was involved in the avocation of selling dry fish and was earning an income of not less than Rs.1,500/- per day. There was no evidence before the Tribunal regarding the avocation of the deceased and the income earned by him. Therefore, the Tribunal proceeded to fix the notional monthly income at Rs.10,000/-. Considering the fact that the accident had taken place in the year 2021 and the deceased was taking care of a large family, this Court is inclined to fix the notional monthly income at Rs.15,000/-. 10% can be added towards future prospects considering the age of the deceased. Thus, the compensation under the head of loss of dependency is calculated as follows:

Monthly income fixed	:	Rs.15,000/-
Future prospects to be added	:	10%



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Notional Income arrived at	:	Rs.15,000/- + 10% Rs.16,500/-
After deducting 1/4 th for personal expenses	:	Rs.12,375/-
Multiplier to be adopted	:	9
Loss of Dependency Rs.12,375/- X 12 X 9	:	Rs.13,36,500/-

12.The Tribunal has granted a sum of Rs.44,000/- towards loss of consortium. No compensation has been granted for loss of love and affection to the children. Therefore, this Court wants to grant the compensation under the head of loss of love and affection to all the claimants and each claimant will be entitled to a sum of Rs.40,000/-.

13.In the light of the above discussions, the compensation awarded by the Tribunal is modified as follows:

1.Loss of Dependency	-	Rs.13,36,500.00
2.Loss of love and affection	-	Rs.2,40,000.00
3.Funeral expenses	-	Rs.16,500.00
4.Loss of estate	-	Rs.16,500.00

		Rs.16,09,500.00



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14.The compensation awarded by the Tribunal at Rs.9,68,000/- is hereby enhanced to Rs.16,09,500/-. The 2nd respondent 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 at the first instance and recover the same from the respondents 1 & 3. Insofar as the enhanced compensation of Rs.6,41,500/- is concerned, the appellants / claimants will not be entitled for interest for the period of delay of 181 days in filing this appeal. 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.

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

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Index : Yes / No
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N.ANAND VENKATESH, J.

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To

- 1.The Motor Accident Claims Tribunal No.1,
Special District Court to deal with MCOP cases,
Thiruvallur.
- 2.The Section Officer,
VR Section,
Madras High Court, Chennai.

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