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C.M.A. No.3541 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2024

CORAM:

**THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE**

C.M.A. No.3541 of 2021  
and  
C.M.P. No.20571 of 2021

The Manager,  
M/s.IFFCO-TOKIO General Insurance Co. Ltd.,  
Vellore. .... Appellant

vs.

1. V. Kantharuby  
2. V. Prabu  
3. V. Ajaykumar  
4. M/s.Ashok Leyland Limited  
(Owner of unbuilt lorry- TN 70 TC 0190),  
Having office at New Corporate Office No.1,  
Sardar Patel Road,  
Guindy,  
Chennai – 600 032. .... Respondents

**Prayer :** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 17.03.2021 made in M.C.O.P. No.90 of 2018 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Judge, Vellore.

For Appellant : Mr.S. Arunkumar  
For Respondents : Mr.M.Sivakumar  
for  
M/s.C. Prabakaran for R1 to R3  
R4 – Exparte

**JUDGMENT**



C.M.A. No.3541 of 2021

WEB COPY

This appeal has been filed by the Insurance Company challenging the award dated 17.03.2021 passed by the Motor Accidents Claims Tribunal (I Additional District and Sessions Judge), Vellore in M.C.O.P. No.90 of 2018.

2. The appellant / Insurance Company has challenged the impugned award only on the ground that the quantum of compensation awarded by the Tribunal is excessive.

3. The Tribunal under the impugned award directed the appellant / Insurance Company to pay a compensation of Rs.17,89,250/- to the respondents 1 to 3 / claimants, after deducting a sum of Rs.3,15,750/- towards contributory negligence @ 15% on the part of the deceased, as detailed below:

| <i><b>Heads</b></i>        | <i><b>Award Amount<br/>(Rs.)</b></i> |
|----------------------------|--------------------------------------|
| Loss of income             | 19,79,964                            |
| Loss of consortium         | 40,000                               |
| Loss of love and affection | 50,000                               |
| Loss of estate             | 15,000                               |
| Funeral expenses           | 15,000                               |



C.M.A. No.3541 of 2021

| <i><b>Heads</b></i>                     | <i><b>Award Amount<br/>(Rs.)</b></i> |
|-----------------------------------------|--------------------------------------|
| Transport expenses                      | 5,000                                |
|                                         | 21,04,964                            |
| Rounded to                              | 21,05,000                            |
| <b>Less Contributory<br/>negligence</b> | <b>3,15,750</b>                      |
| <b>Total</b>                            | <b>17,89,250</b>                     |

4. Heard Mr.S. Arunkumar, learned counsel for the appellant / Insurance Company and Mr.M. Sivakumar, learned counsel for the respondents 1 to 3. The 4<sup>th</sup> respondent has remained exparte both before the Tribunal as well as this Court.

5. This Court has perused and examined the impugned award passed by the Tribunal.

6. The respondents 1 to 3 are the claimants and the Legal Representatives of the deceased Vasudevan, who died on 06.01.2018 as a result of an accident caused by the vehicle owned by the 4<sup>th</sup> respondent and insured with the appellant / Insurance Company.

7. Admittedly the deceased was aged 57 years at the time of the accident and he was an Ex-Serviceman and an Agriculturist. Though



C.M.A. No.3541 of 2021

the respondents 1 to 3 / claimants, who are his dependants have not filed any documentary evidence to prove the monthly income of the deceased, the Tribunal has fixed the monthly income of the deceased on notional basis at Rs.25,000/-. When there is no evidence placed on record by the respondents 1 to 3 / claimants to prove that the accident victim (deceased) was earning Rs.25,000/-p.m. on the date of the accident, the Tribunal ought to have fixed the monthly income of the deceased on notional basis at a lesser sum. The accident happened on 06.01.2018. This Court is of the considered view that after giving due consideration to the evidence available on record and in view of the fact that the deceased was aged 57 years and since no documentary evidence has been produced by the respondents 1 to 3 / claimants to prove the monthly income of the deceased, the monthly income of the deceased has to be fixed at Rs.13,000/-, on notional basis, instead of Rs.25,000/- p.m. fixed by the Tribunal under the impugned award. The Tribunal has rightly adopted the correct multiplier of “9” and has rightly deducted 1/3<sup>rd</sup> towards the personal expenses of the deceased as well as rightly awarded 10% towards loss of future prospects under the impugned award after giving due consideration to the age of the deceased, who was admittedly aged 57 years at the time of the accident. Since the notional monthly income of



C.M.A. No.3541 of 2021

the deceased is reduced to Rs.13,000/- by this Court from Rs.25,000/- erroneously fixed by the Tribunal, the loss of income payable to the respondents 1 to 3 / claimants is re-assessed by this Court in the following manner :-

$$\text{Rs.13000} + 10\% \text{ Less } 1/3^{\text{rd}} \times 12 \times 9 = \text{Rs.10,29,564/-}$$

8. The Tribunal under the impugned award has awarded a lesser compensation towards loss of love and affection despite the fact that the deceased has left behind his two sons as his dependants. As per the settled law, for each of the dependants Rs.40,000/- has to be awarded for loss of love and affection. Therefore, this Court awards a compensation of Rs.80,000/- towards loss of love and affection to the respondents 2 and 3 / claimants, who are the Sons of the deceased.

9. The Tribunal has rightly awarded a compensation of Rs.40,000/- towards loss of consortium to the wife of the deceased under the impugned award and the same is confirmed by this Court.

10. Insofar as the compensation awarded by the Tribunal towards funeral expenses and loss of estate at Rs.15,000/- each to the respondents



C.M.A. No.3541 of 2021

1 to 3 / claimants is concerned, the same is a just compensation and it is confirmed by this Court.

11. However, the Tribunal has erroneously awarded a compensation of Rs.5,000/- towards transportation despite the fact that the claim made by the respondents 1 to 3 / claimants is a fatal accident claim. For a fatal accident claim, the compensation towards transportation cannot be awarded. Hence the same is set aside by this Court.

12. Admittedly as seen from the evidence available on record, the accident victim(deceased) was riding a two wheeler insured with the appellant / Insurance Company and was not wearing a helmet at the time of the accident. The Tribunal has rightly fixed the contributory negligence at 15% on the part of the deceased, since he was not wearing a helmet at the time of the accident. There is no infirmity in the said finding and the same is confirmed by this Court.

13. For the foregoing reasons, the amount awarded by the Tribunal is reduced in the following manner:



C.M.A. No.3541 of 2021

| <i><b>Heads</b></i>                      | <i><b>Amount<br/>awarded by<br/>the tribunal</b></i> | <i><b>Amount<br/>awarded by<br/>this Court</b></i> |
|------------------------------------------|------------------------------------------------------|----------------------------------------------------|
| Loss of Income                           | 19,79,964                                            | 10,29,564                                          |
| Loss of consortium                       | 40,000                                               | 40,000                                             |
| Loss of love and affection               | 50,000                                               | 80,000                                             |
| Loss of estate                           | 15,000                                               | 15,000                                             |
| Funeral expenses                         | 15,000                                               | 15,000                                             |
| Transport expenses                       | 5,000                                                | -                                                  |
|                                          | 21,04,964                                            | 11,79,564                                          |
| Rounded to                               | 21,05,000                                            | 11,79,600                                          |
| <b>Contributory negligence<br/>@ 15%</b> | <b>3,15,750</b>                                      | <b>1,76,940</b>                                    |
| <b>Total</b>                             | <b>17,89,250</b>                                     | <b>10,02,660</b>                                   |

14. In the result, this Civil Miscellaneous Appeal stands allowed, by reducing the compensation awarded by the Tribunal under the impugned award from Rs.17,89,250/- to Rs.10,02,660/- i.e., after deducting contributory negligence @ 15% from the award amount. No costs. Consequently, connected miscellaneous petition is closed.

15. The appellant / Insurance Company is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.90 of 2018 on the file of the Motor Accidents Claims Tribunal, I Additional



C.M.A. No.3541 of 2021

District and Sessions Court, Vellore, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respondents 1 to 3 /claimants as per the same ratio of apportionment made by the Tribunal through RTGS, within a period of two weeks thereafter.

**01.07.2024**

Index: Yes/No  
Internet: Yes/No  
Speaking Order/Non-Speaking Order  
vsi2

**ABDUL QUDDHOSE, J.**

vsi2

To  
1. The I Additional District and Sessions Judge,  
Motor Accidents Claims Tribunal,



C.M.A. No.3541 of 2021

Vellore.

2. The Section Officer,  
V.R. Section, High Court of Madras,  
Chennai – 104.

C.M.A. No.3541 of 2021

**01.07.2024**