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C.M.A.No.2764 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2764 of 2021

- 1.Mahalakshmi
- 2.Nirmala (Minor)
- 3.Sarathkumar (Minor)

[Appellants 2 & 3 are *Suo motu* declared as major and their mother/Sujatha is discharged from guardianship of the appellants 2 & 3, vide order of this Court dated 09.12.2024 made in CMA.No.2746 of 2021]

... Appellants

Versus

- 1.OST Logistics,
No.39, Rajiv Gandhi Salai,
Kalpattur Village,
Padur Post – 603 103.

- 2.Bharathi Axa General Ins.Co.Ltd.,
Flat No.162, 2nd Floor, Metro Plaza,
Anna Salai, Chennai – 02.

... Respondents

[1st respondent is remained ex-parte before the Tribunal, hence, in this appeal the notice to the 1st respondent is hereby dispensed with.]

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal and be pleased to enhance the amount awarded in M.C.O.P.No.1049 of 2016 dated 10.11.2020 on the file of the Motor Accident Claims Tribunal, (Small Causes Court, Special Sub-



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Court No.1), at Chennai as prayed for with interest and cost.

For Appellants : Mr. K. Varadha Kamaraj

For Respondents : Mr. B. Sivakollapan (for R2)

: Notice dispensed with (for R1)

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants/claimants for enhancement of compensation awarded in M.C.O.P.No.1049 of 2016 before the Motor Accident Claims Tribunal, (Small Causes Court) Special Court No.1, Chennai.

2. Since the first respondent remained ex-parte before the Tribunal, notice to the first respondent is hereby dispensed with.

3. The case of the claimants is that on 14.12.2015 at about 7.45 hours, the deceased was walking in the road from West to East in front of a house bearing D.No.12/129, near Koovam Bridge, Bajanai Koil Street, Choolaimedu, Chennai -94. At that time, a Tempo Traveller Van bearing Registration No.TN-11-Z-3205 proceeding from the same direction, was driven by its driver in a rash and negligent manner without following the



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traffic rules, hit the deceased from behind. In the impact, The deceased fell down on the road and sustained head injuries as well as multiple fatal injuries all over the body. Immediately, the deceased was rushed to Rajiv Gandhi Government General Hospital, where he underwent treatment as an inpatient. In spite of treatment, the deceased succumbed to the injuries on 20.12.2015. The post-mortem from the hospital revealed that the deceased died due to accidental injuries. Therefore, the claimants filed a claim petition as against the owner of the Tempo Traveller/first respondent and the insurer of the vehicle as second respondent, claiming a sum of Rs.40,00,000/- as compensation towards the death of the deceased.

4. The claim petition was resisted by the second respondent/ Insurance Company, by filing a counter statement, denying the age, the place, date, and time of accident as well as the income and occupation of the deceased. They also claimed that vehicle involved in the accident was not insured with their Insurance Company and that policy number mentioned in the First Information Report is not related to the Tempo Traveller Van involved in the accident. It was also contended that the claim amount claimed by the claimants is highly excessive and unreasonable. In any event,



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the claim petition has to be dismissed on the ground that the owner of the said Van did not possess a valid fitness certificate to drive the vehicle and it is in violation of the Motor Vehicles Act. Therefore, it was claimed by the second respondent/Insurance Company that they must be exonerated from the liability to pay the compensation amount to the claimants.

5. Before the Tribunal, on the side of the appellants/claimants, the first petitioner was examined as P.W.1, and Ex.P1 to Ex.P9 were marked. On the side of the respondents, an official witness was examined as R.W.1, and Ex.R1 and Ex.R2 were marked.

6. Upon appreciating all the evidence and the arguments advanced by the learned counsel on both sides, the Tribunal has come to the conclusion that the first respondent being the owner of the Tempo Traveller Van was liable to pay to the compensation towards the death of the deceased and awarded a sum of Rs.15,75,000/-.

7. As against the findings rendered by the Tribunal, holding that the first respondent-owner of the vehicle is liable to pay compensation, no



appeal has been filed by the first respondent-owner.

8. Learned counsel for the appellants/claimants submits that the Tribunal erred in fixing the monthly income of the deceased at Rs.700/- per day, which is not acceptable. The deceased was hale and healthy at the time of accident and he was looking after his family consisting of his wife and two minor children. While so, the Tribunal ought not to have fixed a sum of Rs.700/- per day as notional income of the deceased and it calls for interference. Further, the Tribunal also awarded a very meagre amount as compensation under the above heads such as loss of love and affection, loss of consortium to the first claimant and loss of estate. Therefore, the learned counsel for the appellants prayed this Court to allow the appeal by enhancing the compensation by fixing the liability on both respondents.

9. Per contra, learned counsel appearing for the second respondent Insurance Company submitted that the Assistant Manager of the second respondent's company was examined as R.W.1 and produced relevant records to prove that the policy mentioned in the complaint was not covered with their company and therefore, the second respondent was rightly



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exonerated from payment of compensation to the claimants. Accordingly, the learned counsel for the second respondent prayed for dismissal of this appeal.

10. Heard the learned counsel for the appellants and the learned counsel appearing for the second respondent and perused the materials available on record.

11. This Court feels that the factum and manner of the accident are not disputed in this appeal. The major grievance of the appellants/claimants is that the quantum of compensation awarded by the Tribunal was on the lower side. The appellants/claimants claim that the Tribunal erroneously took a sum of Rs.10,000/- per month as notional income of the deceased even though the accident occurred in the year 2015.

12. This Court feels that as per Ex.P5 and P6, the age of the deceased was 45 years. Taking note of the year of accident, the Tribunal, in the opinion of this Court, has rightly fixed a sum of Rs.10,000/- per month as the notional income of the deceased and it cannot be said to be unfair or



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unreasonable. Considering the age of the deceased and the dependants, the Tribunal has rightly applied the multiplier method and awarded a sum of Rs.14,00,000/- towards the loss of dependency, which is just and reasonable, and the same need not be interfered with by this Court. The compensation amount awarded by the Tribunal is tabulated hereunder:-

S.No.	Description	Amount awarded by the Tribunal
1.	Total loss of dependancy	Rs.14,00,000/-
2.	Loss of Consortium	Rs.40,000/-
3.	Loss of Love and Affection	Rs.1,00,000/-
4.	Loss of Estate	Rs.15,000/-
5.	Transport Charges	Rs.5,000/-
6.	Funeral Charges	Rs.15,000/-
	Total	Rs.15,75,000/-

13. Insofar as the compensation awarded under other heads are concerned, the Tribunal has taken into consideration the year of accident and other attendant facts and rightly awarded a just and fair compensation to the appellants/claimants and it cannot be said to be erroneous or arbitrary. Therefore, this Court confirms the award passed by the Tribunal and the Civil Miscellaneous Appeal is liable to be dismissed.

14. As far as fixing liability on the first respondent/owner is concerned, there is no proof to show that the offending vehicle had a valid policy and the policy number provided in the First Information Report was



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issued by the second respondent-Insurance Company. While so, it is unfair to direct the Insurance Company to pay the compensation amount. In such circumstances, the Tribunal has rightly fixed the liability on the first respondent.

15. When the claim petition was filed in the year 2016, the 2nd and 3rd appellants were aged about 15 years and 10 years respectively. Now, the 2nd and the 3rd appellants should be aged about 24 and 19 years respectively, and therefore, they are major. Although no application has been taken out to declare the 2nd and 3rd appellants as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the 2nd and the 3rd appellants as major and discharges her guardian Mrs.Mahalakshmi, from the guardianship. The Registry shall carry out the necessary amendments.

16. On the foregoing reasons, this Civil Miscellaneous Appeal stands dismissed, confirming the award dated 10.11.2020 passed by the Tribunal in M.C.O.P. No.1049 of 2016. The first respondent is directed to deposit the



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compensation of **Rs.15,75,000/-** as awarded by the Tribunal to the credit of M.C.O.P. No.1049 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to transfer the compensation amount directly to the bank account of the appellants/claimants through RTGS within a period of two (2) weeks thereafter. It is underscored that the appellants/claimants are not entitled to any interest for the default period, if any. The appellants No.2 and 3 are entitled to **Rs.5,00,000/- each** as awarded by the Tribunal and the balance compensation amount to be paid to the wife of the deceased/first claimant. There shall be no order as to costs in the present civil miscellaneous appeal.

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

klr

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M.DHANDAPANI, J.,

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To

1. The Motor Accident Claims Tribunal,
(Small Causes Court, Special Sub-Court No.1), at Chennai.
2. The Section Officer, V.R. Section, High Court, Madras.

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