



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3059 of 2019

Branch Manager
HDFC ERGO General Insurance Co. Ltd.,
4th Floor, Raja Narayanan Tower,
Race Course Road,
Gopalapuram, Coimbatore-641 018.

.. Appellant

Vs.

1. D.Rajeswari (Died)

2. D.Raja

3. D.Mareeswari

4. G.Sharmila

(R1 died. Respondents 2 to 4 impleaded vide
memo dated 24.06.2024 by this Court in
CMA. No.3059 of 2019 and CMP.No.16738 of 2019)

5. J.Bhanwardass

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 09.01.2019 made in MCOP. No.1400 of 2015 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Tiruppur.

For Appellant : Mrs.Bhargavi.G.P.
For Respondents : Mr.Balaji Thirumoorthy RR2,3 and 4
R5 – NDW vide order dated 07.06.2023

**J U D G M E N T**

WEB COPY The appellant insurance company, aggrieved by the quantum of compensation in MCOP. No.1400 of 2015 dated 09.01.2019 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Tiruppur.

2. The respondents 1 to 4 have filed a claim petition on the ground that on 30.08.2014, the first respondent Rajeswari and her husband Dharmaraj while walking at Avinashi Road, Anuparpalayam, Tiruppur, the 5th respondent, drove the TVS XL in a rash and negligent manner and dashed against the first respondent and her husband. As a result of which, both have sustained injuries and admitted in the hospital. On 06.06.2015, the said Dharmaraj died in the hospital in spite of treatment given by the Doctor. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation for a sum of Rs.30,00,000/- for the death of the said Dharmaraj.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of 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 rider of the TVS XL. Having rendered such a finding, the total compensation was fixed at Rs.9,81,900/- under various heads as follows :-

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of income	8,01,900
2.	Loss of consortium	1,60,000
3.	Funeral expenses	15,000
4.	Transportation	5,000
	Total	Rs.9,81,900/-

4. The Insurance company aggrieved by the quantum of compensation fixed by the Tribunal has filed the present appeal before this Court.

5. The learned counsel for the appellant submitted that in the claim petition, the age of the deceased is mentioned as 60 years, but in the Adhar card the age has mentioned as 67 years. Without considering said fact, the Tribunal has applied the multiplier "9" as per *Sarla Verma Case*. "5" multiplier has to be adopted for the age group 65 and above. Further, as



per the decision of *Pranay Sethi*, 10% future prospectus has been added that has to be deducted by this Court as the age of the deceased is about 67 years at the time of the accident. The Tribunal has fixed a sum of Rs.1,60,000/- towards love and affection and the same is highly excessive.

6. Per contra, learned counsel appearing for the respondent/claimants submitted that the Tribunal has not awarded any compensation towards loss of estate and the compensation awarded by the Tribunal under the other heads are just and reasonable, which does not require any enhancement.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. The factum of the accident is not disputed by the parties and so also the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant is with regard to the quantum of compensation awarded. The accident is in the year 2015 and the age of the



deceased is 67 years. In this regard, the Tribunal has fixed salary for the deceased at Rs.9000/- and 10% towards future prospectus and awarded a sum of Rs.5,68,000/- towards loss of income and the same is set aside. This Court is inclined to fix a salary of the deceased at Rs.13,000/- and fixed 10% future prospectus. The age of the deceased is 67 years. Therefore, 5 multiplier has to be awarded. The loss of income fixed by this Court is as follows:

$$\begin{aligned} &= \text{Rs.13,000/-} \times \frac{1}{3} \text{ (deduction)} \\ &= 4333\text{-} - 13000\text{-} = 8667 \times 10\% \text{ (future prospectus)} \\ &= 866 + 8667\text{-} = 9533\text{-} \times 12 \times "5" \text{ (multiplier)} \\ &= \mathbf{5,71,980\text{-}} \end{aligned}$$

9. In respect of loss of love and affection, the Tribunal has fixed a sum of Rs.1,60,000/- and the same is modified as Rs.1,50,000/- (three persons) and this Court awarded a sum of Rs.15,000/- towards loss of estate which the claimants are entitled to.

10. In the light of the above discussion, this Court modifies the compensation in the following manner:



11. The compensation awarded by the Tribunal at Rs.9,81,900/- is reduced to Rs.7,56,980/-. The appellant insurance company is directed to deposit the entire modified amount along with interest at the rate of 7.5% per annum from the date of filing of the petition to till the date of deposit within a period of four weeks from the date of receipt of a copy of this order before the Tribunal in the credit of the case number. Upon receipt of such payment, the Tribunal shall deposit the compensation amount for a sum of Rs.2,52,326/- each to the respondents 2, 3 and 4 to their bank account through RTGS along with interest as the first respondent died during pendency of this case.



12. In the result, the Civil Miscellaneous Appeal is partly allowed. No

costs.

08.11.2024

Index : Yes

Speaking Order : Yes

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To

The Motor Accidents Claims Tribunal,

I Additional District Judge, Tiruppur.



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M.DHANDAPANI,J.

Rli

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