



CMA No.2271 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.2271 of 2023
and CMP Nos.29398 & 21706 of 2023

The Managing Director
The New India Insurance Company Ltd.,
No.Jeeva Maina, 1st Floor, Armenian Street
Parrys, Chennai 600 001.

.. Appellant

.Vs

1.R.Makeshwari

2.L.manikandan

3.Durairaj

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount awarded by the Tribunal in M.C.O.P.No.2173 of 2015 dated 31.10.2022, on the file of Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Ms.Bhava Dharani
for Mr.M.Manikandhan
for R1 & R2



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JUDGMENT

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The Insurance Company has filed the present appeal against the award passed by the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai, in MCOP No. 2173 of 2015 dated 31.10.2022.

2.The claimants, who are the daughter and son of the deceased Latchalinam filed the claim petition on the ground that the deceased was returning back in a two wheeler on 23.11.2014 from Periyapalaiyam and was coming towards Anagaputhur bridge and at that point of time, the rider of the two wheeler drove the vehicle in a rash and negligent manner and as a result, the deceased fell down and sustained head injuries and he succumbed to the injuries. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of 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 rider of the two wheeler. The Tribunal having reached such a finding, proceeded to fix the total compensation at Rs.19,36,528/- [rounded off to 19,36,600/-] under various heads as follows:



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Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency	18,15,528/-
2.	Loss of Consortium	88,000/-
3.	Loss of Estate	16,500/-
4.	Funeral Expenses	16,500/-
	Total	19,36,528/-
	Rounded off to	19,36,600/-

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

5.The insurance company aggrieved by the award passed by the Tribunal has filed the present appeal.

5.Heard Mr.M.Krishnamoorthy, learned counsel for the appellant – Insurance Company and Ms.Bhava Dharani, learned counsel for R1 and R2.

6.This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully went through the award passed by the Tribunal.



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7.The learned counsel for the appellant submitted that a reading of the FIR shows that the deceased Latchalingam, was travelling in two wheeler without wearing a helmet and the rider of the two wheeler had dashed on the central median and the deceased fell down and sustained grievous injuries. Therefore, it was contended that some amount of contributory negligence has to be attributed against the deceased.

8.The tribunal on considering the evidence available on record has come to a conclusion that the entire negligence is upon the rider of the two wheeler and it was only because of him the accident had taken place. In the light of this finding, this Court is not inclined to attribute any contributory negligence against the deceased just because he was not wearing the helmet.

9.The next ground of challenge is with regard to the quantum of compensation fixed by the Tribunal and particularly the monthly income that was fixed. The Tribunal had relied upon Ex.P.15 which was a salary slip. Admittedly, the deceased was working in the private establishment office of the son-in-law. The salary was paid to him by his son-in-law. Considering the same, the Tribunal had fixed the monthly salary at Rs.17,940/-.



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10.It is important to note that the compensation under the head 'loss of income/dependency' can be calculated only when the Court is satisfied that the demise had really caused loss of income/dependency for the claimants. Insofar as the first claimant is concerned, she is the daughter of the deceased. It is her husband who is running the establishment and he was paying the salary to the deceased. Therefore, even after the demise of the father, there will be no loss of income or loss of dependency for the first claimant since she is supported by her husband who was running the establishment.

11.Insofar as the second claimant is concerned, he was aged about 30 years at the time of the accident. In view of the same, he would not have been completely dependent on his father. Hence, 50% can be deducted towards personal expenditure of the deceased. Taking into consideration the facts of this case, this Court is inclined to fix the notional monthly income of the deceased at Rs.9,000/- .

12.The Tribunal had added 15% towards future prospects. The appropriate percentage is only 10% as per the judgment of Apex Court in Pranay Sethi. Therefore, 10% can be added towards future prospects and notional monthly income can be arrived at Rs.9,900/-. Thus, the compensation under the head 'loss of dependency' can be calculated as follows:



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Monthly income fixed	:	Rs.9000/-
Future prospects to be added	:	10%
Notional monthly income arrived at	:	Rs.9000/- + 10% Rs.9,900/-
After deducting 1/2 for personal expenses:		Rs.4,950/-
Multiplier to be adopted	:	11
Loss of Dependency Rs.4950/- * 12 * 11	:	Rs.6,53,400/-

13.Insofar as the compensation that has been fixed under the other heads, this Court finds that the same is reasonable and it does not find any interference.

14.In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency	6,53,400/-
2.	Loss of Consortium	88,000/-
3.	Loss of Estate	16,500/-
4.	Funeral Expenses	16,500/-
	Total	7,74,400/-

15.The learned counsel for the appellant submitted that the appellant



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insurance company has deposited 50% of the award amount along with interest pursuant to the interim order passed by this Court on 27.09.2023. In view of the same, whatever amount remains after satisfying the compensation amount payable to the claimants, can be withdrawn by the appellant Insurance Company. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

16. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

05.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To

Motor Accidents Claims Tribunal
(II Judge, Court of Small Causes)
Chennai.

N. ANAND VENKATESH., J

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