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C.M.A.No.3084 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3084 of 2024

1.Rajamma

2.Manjula

3.Nandha Kumar

... Appellants

Vs.

1.Krishnappa

2.The Branch Manager,

The New India Assurance Company Limited,
No.7-BK Building, Ramalinga Madalaya Street,
Gugai, Salem-636 006.

3.Muniyamma

... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.11.2021 made in M.C.O.P.No.354 of 2018 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur.



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For Appellants : Mr.S.P.Yuaraj

For Respondents : Mr.M.Krishnamoorthy for R2

J U D G M E N T

The appellants / claimants, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Additional District Court, Hosur, in M.C.O.P.No.354 of 2018, dated 30.11.2021, have filed this appeal.

2. On 18.04.2017, at about 16.45 hours, when the deceased was riding his Hero Honda Splendor bearing Reg.No.TN 22 L 1748 in Denkanikottai to Thalli Road in the left side, near Anniyalam Village Guruswamy's land, the Mahindra Pickup bearing Reg.No.KA 51 D 5682 of the first respondent, which was insured with the second respondent coming from Denkanikottai towards Thalli, was driven by its driver in a rash and negligent manner and dashed against the deceased's vehicle, due to which, the deceased sustained fatal injuries and died on the spot of occurrence. The first respondent is the owner of Mahindra Pickup and the second respondent



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is the insurer of the vehicle. It is under these circumstances, the claim petition came to be filed before the Tribunal by the claimants, who are the wife, daughter and son of the deceased, seeking for compensation. The third respondent is the mother of the deceased.

3. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P1 to P10 were marked. On the side of the respondents, no witness was examined and Ex.R1 was marked. 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 driver of Mahindra Pickup and the driving license of the deceased was not produced inspite of cross-examination on this aspect and therefore, 15% of contributory negligence was fixed on the deceased. Having reached such a finding, the Tribunal proceeded to fix the total compensation at Rs.8,38,950/- under various heads. The above compensation was directed to be paid by the second respondent along with



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interest at 7.5% p.a.

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4. The claimants, not being satisfied with the quantum of compensation awarded by the Tribunal, have filed this appeal seeking compensation.

5. The learned counsel appearing for the appellants submitted that the Tribunal has erroneously fixed 15% of contributory negligence on the deceased for having not produced the driving license and mere failure to produce the driving license is not sufficient to draw adverse inference in respect of contributory negligence. At the time of accident, the deceased was doing vegetable business/land commission agent and was earning a sum of Rs.20,000/- per month, but the Tribunal has taken the monthly income of the deceased as Rs.10,000/- per month only. The Tribunal has failed to award more amount for transport expenses and the compensation awarded under the other heads is also on the lower side. Hence, the learned counsel for the appellants prays for enhancement of compensation.



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6. The first and third respondents remained *ex-parte* before the Tribunal.

7. Per contra, learned counsel appearing for the second respondent / Insurance company denied the manner of accident and claimed that since the deceased has not possessed the driving license at the time of accident, the Tribunal has rightly fixed 15% of contributory negligence on the deceased and the compensation awarded under the other heads is also on the higher side. Hence, he prays for dismissal of this appeal.

8. 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.

9. Though the Tribunal has held that inspite of cross-examination, the driving license was not produced, however, there is no finding with



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regard to the said extent that the petitioner has not possessed of driving license. Merely non-production of driving license cannot be taken a mean to the extent that the petitioner has not possessed the driving license at the time of accident. No steps were taken either by the Tribunal or by the second respondent/Insurance Company to find out whether the deceased was possessing the driving license or not?. In the absence of any material, fixing contributory negligence of 15% on the deceased for the accident cannot be sustained, more so, when the Tribunal has come to a definite conclusion that the accident had happened due to rash and negligent driving of the first respondent's vehicle and therefore, 15% of contributory negligence fixed on the deceased is hereby set aside.

10. The deceased, at the time of his demise, was aged about 55 years and was engaged in vegetable business and land commission agent. The accident had taken place in the year 2017. Therefore, considering the cost of living that was prevailing at the relevant point of time and considering the avocation in which the deceased was involved and also the



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age of the deceased, this Court is inclined to increase the notional monthly income to Rs.13,000/-. If so, the loss of income/dependency would be:

Monthly Income	:	Rs. 13,000/-
Add: Future Prospects	:	Rs. 1,300/-
10% of Rs.13,000/-		-----
		Rs. 14,300/-
Annual Income	:	Rs. 1,71,600/-
(14,300 * 12)		
Less : Personal expenses		
Rs.1,71,600/- * 1/3	:	Rs. 57,200/-

		Rs. 1,14,400/-
Multiplier	:	x 11

Loss of income/dependency :		Rs.12,58,400/-

11. Insofar as transportation expenses is concerned, the Tribunal has awarded only a sum of Rs.5,000/- which is on the lower side and the same is enhanced to Rs.10,000/-. The compensation awarded under the other heads is just and reasonable and is hereby confirmed.



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12. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads is modified as under:

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1	Loss of Dependency	Rs.7,92,000/-	Rs.12,58,400/-
2	Spousal Consortium	Rs.40,000/-	Rs.40,000/-
3	Filial Consortium	Rs.80,000/-	Rs.80,000/-
4	Parental Consortium	Rs.40,000/-	Rs.40,000/-
5	Transportation	Rs.5,000/-	Rs.10,000/-
6.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
7.	Loss of Estate	Rs.15,000/-	Rs.15,000/-
	Total	Rs.9,87,000/-	Rs.14,58,400/-
	15% Contributory negligence	Rs.1,48,050/-	-
	Compensation Payable	Rs.8,38,950/-	Rs.14,58,400/-

13. In the result, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs.8,38,950/- is hereby enhanced to Rs.14,58,400/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The



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second respondent /Insurance Company is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.354 of 2018 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur. On such deposit, the appellants and the third respondent are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn as per the apportionment fixed by the Tribunal by making proper application before the Tribunal. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

28.11.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
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To

1.The Motor Accident Claims Tribunal,
Additional District Court, Hosur.

2. The Section Officer,
V.R. Section,
High Court, Chennai.



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This matter is listed today under the caption "for being mentioned" at the instance of the Registry.

2. It is brought to the notice of this Court by the Registry that, the interest for the default period which has not been granted, vide order of this Court dated 30.10.2024 and also the payment of Court fee to be paid by the appellants on the compensation enhanced by this Court, has not been incorporated in the operative portion of the judgment dated 28.11.2024 in and by which the Civil Miscellaneous Appeal was partly allowed with a direction to the second respondent to deposit the entire award amount now determined by this Court with appropriate interest before the tribunal and therefore, necessary clarification is sought.



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3. This Court perused the judgment dated 28.11.2024 and finds that there is no mentioning about the interest for the default period in the operative portion of the judgment dated 28.11.2024, though it was not awarded vide order dated 30.10.2024 and about the payment of Court fee on the enhanced compensation which requires to be incorporated.

4. In view of the same, Paragraph 13 of the judgment dated 28.11.2024 is recalled and shall stand replaced with the following paragraph:

“ 13. In the result, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs.8,38,950/- is hereby enhanced to Rs.14,58,400/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. However, it is made clear that the appellants/claimants are not entitled for the interest for the



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default period. The second respondent /Insurance Company is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.354 of 2018 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur. On such deposit, the appellants and the third respondent are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal by making proper application before the Tribunal, after payment of additional court fee by the appellants on the enhanced compensation. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.”



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5. Registry is directed to carry out the necessary correction as aforesaid in the judgment dated 28.11.2024 and issue fresh copy of the order to the learned counsel for the parties.

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