



Civil Miscellaneous Appeal No.1416 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1416 of 2024

1.S.Thavamani
W/o.Late Sammandamoorthy

2.S.Uma Maheswari
W/o.Late Sammandamoorthy

3.S.Usha Nandhini
D/o.Late Sammandamoorthy

4.S.Prabhavathy
D/o.Late Sammandamoorthy

5.S.Mohanram
S/o.Late Sammandamoorthy

6.S.Thangaraj
S/o.Late Sammandamoorthy

... Appellants

Vs.

1.K.Revathy
W/o.Krishnamoorthy

2.ICICI Lombard Insurance Co. Ltd.
represented by its Divisional Manager,
19A, Priya Prasath Complex,
Officers Line, Vellore Town.

... Respondents



Civil Miscellaneous Appeal No.1416 of 2024

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.11.2018 made in M.C.O.P.No.299 of 2016 on the file of Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellants : Ms.D.Jeevitha

For Respondents : Ms.A.Salomi [R2]

JUDGMENT

The appellants/claimants, who are the wife, daughters and sons of the deceased Sammandamoorthy, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore, have filed this appeal against the award passed in M.C.O.P.No.299 of 2016, dated 09.11.2018.

2. The case of the claimants is that the deceased Sammandamoorthy was riding a two wheeler on 11.09.2015 from Vellore to Mottur and at about 4.45 p.m., when he was going near Abdullapuram, the offending vehicle, which was also a two wheeler, was ridden in a rash and negligent manner and it dashed on the two wheeler ridden by the deceased from behind and as a result, the deceased fell down and sustained grievous injuries. Unfortunately, he succumbed to the injuries.

A First Information Report came to be registered in Crime No. 341 of



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2015. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking compensation.

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 due to the rash and negligent riding on the part of the offending vehicle. Having rendered such a finding, the Tribunal took into consideration the fact that the deceased was not possessing a valid driving license and therefore, attributed 10% contributory negligence against the deceased and fixed 90% negligence as against the respondents. The Tribunal proceeded to determine the compensation and awarded total compensation of Rs.3,90,000/- under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of Income	2,70,000/-
2.	Loss of love & affection	60,000/-
3.	Loss of consortium	40,000/-
4.	Funeral expenses	15,000/-
5.	Transport expenses	5,000/-
	Total	3,90,000/-

Out of the above compensation, a sum of Rs.3,51,000/- (90%) was



directed to be paid to the claimants with interest at the rate of 7.5% p.a.

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4. The claimants, not being satisfied with the compensation awarded by the Tribunal and aggrieved by the finding that 10% contributory negligence was attributable to the deceased, have filed the present appeal.

5. Heard Ms.D.Jeevitha, learned counsel for appellants/claimants and Ms.A.Salomi, learned counsel for second respondent insurance company.

6. This Court carefully considered the submissions made on either side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.

8. The first issue is with regard to 10% contributory negligence attributed against the deceased. The Tribunal, on appreciation of evidence, came to a categorical conclusion that the accident had taken



place only due to the rash and negligent riding on the part of the offending vehicle. However, the Tribunal has attributed 10% contributory negligence on the deceased on the ground that the deceased was not possessing a valid driving license. Not possessing a valid driving license may be a violation of the relevant law but that factor by itself cannot be a ground to attribute contributory negligence. The law on this issue is now too well-settled. Therefore, unless and otherwise, there is material to show that non-possession of the driving license had actually contributed to the negligence, there is no ground to attribute 10% contributory negligence on the deceased. Hence, the finding rendered by the Tribunal to that effect is liable to be interfered with by this Court.

9. The next issue is with regard to the quantum of compensation fixed by the Tribunal. Learned counsel for appellants submitted that the Tribunal went wrong in fixing the age of the deceased as 72 years. Learned counsel submitted that the postmortem certificate clearly shows that the age of the deceased was 55. The very same age was also mentioned in the claim petition. However, the Tribunal had proceeded to fix the age of the deceased as 72 years based on the driving license, which



was marked as Ex.R2. Hence, it was contended that the age of the deceased must be taken to be 55 years and the proper multiplier must be adopted.

10. The Tribunal has specifically dealt with the issue that has been raised by learned counsel for appellants. What was available before the Tribunal was the postmortem certificate, which was marked as Ex.P5. Insofar as postmortem certificate is concerned, the age of the deceased is normally based on what is said to the doctor at the time of postmortem. That apart, the legal heirship certificate marked as Ex.P8 did not contain the age of the deceased. Ex.R2 is the driving licence issued to the deceased. This was summoned to the Court and the Regional Transport Officer was examined in this regard. While issuing a driving license, the authority takes into consideration various other documents like birth certificate, school leaving certificate, *etc.* before mentioning the date of birth in the driving license. This has to be acted upon as an authentic document issued by a statutory authority and this document shows that the date of birth of the deceased was 01.07.1943. The accident had taken place on 11.09.2015. Hence, the Tribunal was right in arriving at the



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conclusion that the deceased was aged about 72 years at the time of accident.

11. Learned counsel for appellants submitted that the wife of the deceased was hardly aged about 54 years and the deceased cannot be aged 72 years as was decided by the Tribunal. This submission of the learned counsel for appellants is more based on assumption. The age of the husband can never be decided based on the age of the wife. The next ground that was urged was that a 72 year old man cannot ride a two wheeler. This is yet another ground raised based on assumption, which only deserves to be rejected.

12. The Tribunal has applied the proper multiplier and has calculated the loss of income and the same does not require the interference of this Court.

13. The Tribunal has granted a sum of Rs.40,000/- towards loss of consortium and Rs.60,000/- towards loss of love and affection. Both these heads can be consolidated as one head *viz.*, love and affection and a sum



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of Rs.40,000/- can be fixed for each of the claimant. Accordingly, a sum of Rs.2,40,000/- can be granted under this head.

14. The Tribunal has not granted any compensation towards 'loss of estate' and hence, a sum of Rs.15,000/- is granted under this head.

15. The compensation awarded under the other heads is reasonable and it does not require the interference of this Court.

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

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Loss of Income	2,70,000/-	2,70,000/-
2.	Loss of love & affection	60,000/-	2,40,000/-
3.	Loss of consortium	40,000/-	-
4.	Funeral expenses	15,000/-	15,000/-
5.	Transport expenses	5,000/-	5,000/-
6.	Loss of estate	-	15,000/-
	Total	3,90,000/-	5,45,000/-



Civil Miscellaneous Appeal No.1416 of 2024

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17. The compensation awarded by the Tribunal at Rs.3,90,000/- is enhanced to Rs.5,45,000/-. The second respondent insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.1,55,000/- is concerned, the appellants/claimants will not be entitled for interest for the period of delay of 391 days as was ordered by this Court in C.M.P.No.18286 of 2021 in C.M.A.Sr.No.95858 of 2021 dated 03.06.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

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

25.06.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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N.ANAND VENKATESH, J.

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To

The Motor Accident Claims Tribunal,
I Additional District and Sessions Court,
Vellore.

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