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C.M.A.No.3310 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3310 of 2024

1.S.Periyasamy
2.P.Chandamary

... Appellants / Petitioners

Vs.

1.S.Ashok Kumar

2.The Oriental General Insurance Company Limited,
Branch Office No.08-1-210, P.H.Road,
Opposite District Court, Chittoor,
Andhra Pradesh-517 001.

... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.01.2023 made in M.C.O.P.No.432 of 2020 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellant : Mr.S.Udhayakumar

For Respondents : Mr.J.Chandran for R2



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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, Special District Court, Krishnagiri, in M.C.O.P.No.432 of 2020, dated 05.01.2023, have filed this appeal.

2. On 26.01.2020 at about 20.45 hours, the deceased was walking on the left side mud portion of Kuppam to Mallanur Road to cross the road. When the deceased was proceeding near Om Sakthi Temple at Thimmapuram Village, a Bajaj Pulsar Bike driven by its rider came in a rash and negligent manner at an uncontrollable speed without making horn and suddenly hit the deceased, due to which, the deceased sustained fatal injuries on his head and other parts of the body and died on the way to hospital. In this regard, FIR in Crime No.17 of 2020 was also registered. Under these circumstances, the claim petition came to be filed before the Tribunal seeking for compensation by the claimants, who are the father and the



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mother of the deceased. The first respondent is the owner of Bajaj Pulsar Bike and the second respondent is the insurer of the bike.

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 no document 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 rider of the bike. Having reached such a finding, the Tribunal proceeded to fix the total compensation at Rs.5,71,000/- under various heads. The above compensation was directed to be paid by the first and second respondents along with interest at 7.5% p.a.

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



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5. The learned counsel appearing for the appellants submitted that the accident is in the year 2020 and the deceased was a minor child and aged about 8 years at the time of accident. Therefore, the Tribunal has to fix the notional income for the minor children more than a sum of Rs.60,000/- per annum, however, the Tribunal has taken the notional income of the deceased minor child at Rs.30,000/- per annum and the other heads awarded by the Tribunal are also very meagre. Hence, the learned counsel for the appellants prays for enhancement of compensation.

6. The first respondent remained *ex-parte* before the Tribunal.

7. Per contra, learned counsel appearing for the second respondent / Insurance company submitted that the Tribunal, taking into consideration the facts and circumstances of the case and the evidence placed before it, has rightly awarded the compensation of Rs.5,71,000/-, which does not require any interference by this Court.



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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. In the instant case, the accident had taken place in the year 2020 and the deceased was aged about 8 years at the time of accident. The Tribunal, relying on the judgment of this Court reported in **2014(1) TNMAC 616** in the case of **United India Insurance Company Limited vs. B.Vijayalakshmi and others**, has fixed the notional income of the deceased at Rs.30,000/-. In the aforesaid case, the accident had taken place in the year 2000. However, in the instant case, the accident is of the year 2020 and hence, it would be appropriate to fix a sum of Rs.60,000/- as notional income per annum and a sum of Rs.60,000/- is fixed as notional income per annum of the deceased minor child. Accordingly, the compensation under the head loss of dependency would be Rs.9,00,000/- (Rs.60,000/- * 15). The amount awarded under the other heads 'loss of Estate' 'Funeral Expenses' and 'Loss of Consortium' is just and reasonable



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and the same is hereby confirmed.

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10. 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.4,50,000/-	Rs.9,00,000/-
2	Loss of Estate	Rs.16,500/-	Rs.16,500/-
3	Funeral Expenses	Rs.16,500/-	Rs.16,500/-
4	Loss of Consortium	Rs.88,000/-	Rs.88,000/-
	Total	Rs.5,71,000/-	Rs.10,21,000/-

11. In the result, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs.5,71,000/- is hereby enhanced to Rs.10,21,000/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. 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



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date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.432 of 2020 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn fixed by the Tribunal by making proper application before the Tribunal. Insofar as the enhanced compensation is concerned, the claimants will not be entitled for interest for the period of delay of 448 days as was ordered by this Court in C.M.P.No.17445 of 2024, dated 25.11.2024. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

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NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

- 1.The Motor Accidents Claims Tribunal,
Special District Court, Krishnagiri.
- 2.The Section Officer,
V.R. Section,
High Court, Chennai.



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M.DHANDAPANI, J.

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