



C.M.A.No.3364 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.12.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3364 of 2024

1.M.Vennila
2.M.Revathi
3.M.Sukritha
4.M.Sakila
5.M.Karthikraja

... Appellants

Vs.

1.P.Saravanan
2.M.Ramakumar
3.The Manager,
National Insurance Company Ltd.,
No.169, II Floor,
Strategic Alliance Auto Tie-up Hub,
Anna Salai, Chennai – 600 003.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.09.2019 in M.C.O.P.No.130 of 2018 on the file of the Sub Judge, MCOP Tribunal, Rasipuram.



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For Appellants : Ms.D.Jeevitha

For Respondents : Mr.J.Michael Visuvasam [R3]

JUDGMENT

The claimants are before this Court seeking an enhancement of the award passed by the Sub Judge, MCOP Tribunal, Rasipuram in M.C.O.P.No.130 of 2018, dated 04.09.2019.

2. The appellants/claimants are the wife, daughters and son of the deceased Murugesan. On 1.4.2018 at about 9.45 p.m., the deceased was riding in his motorcycle bearing Regn.No.TN-28-AX-1629, at that time, the 1st respondent driven his vehicle bearing Regn.No.TN-10-X-2416, which was insured by the 2nd respondent and insured with the 3rd respondent, in a rash and negligent manner, without observing road traffic rules, suddenly hit against the petitioner vehicle. Due to the accident, the deceased sustained fracture all over body and died on this spot. Therefore, the claimants filed a claim petition claiming compensation of Rs.15,00,000/- before the Tribunal



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in M.C.O.P.No.130 of 2018.

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3. Before the Tribunal, the claimants examined four witnesses viz., P.W.1 to P.W.4 and marked 26 documents viz., Ex.P.1 to Ex.P.26. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal partly allowed the petition and awarded a sum of Rs.11,89,000/- as compensation to the claimants. However, by fixing 10% contributory negligence on the part of the deceased, the Tribunal awarded a sum of Rs.10,70,100/- as compensation to the claimants. Challenging the same, the present appeal has been filed by the appellants/claimants.

4. Learned counsel appearing for the appellants submitted that, though the deceased earning a sum of Rs.15,000/- per month, however, the Tribunal fixed a sum of Rs.10,000/- as monthly income, which is on the lower side and the same requires to be reconsidered by this Court. He further submitted that the compensation awarded by the Tribunal under the other heads is also on



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the lower side, which also requires to be re-considered by this Court.

Accordingly, he prays for appropriate enhancement in favour of the appellants.

5. Per contra, the learned counsel appearing for the third respondent/Insurance Company submitted that, by considering all the oral and documentary evidence, the Tribunal has awarded just and reasonable compensation under various heads, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellants and the learned counsel appearing on behalf of the third respondent and perused the materials available on record.

7. The happening of the accident and the travelling of the deceased in his vehicle and the death of the deceased is not in dispute. Admittedly, the deceased was the rider of the two-wheeler, which was insured by the 2nd



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respondent and insured with the 3rd respondent. It is the contention of the 3rd respondent that the deceased was not wearing helmet at the time of accident and the same is violation of motor vehicle acts and rules. Though it is claimed by the appellants that due to the accidental injuries, the deceased was died, however, Ex.P.13/Postmortem certificate reveals that the cause of death of the deceased was due to shock and haemorrhage due to injury on his brain. If at all the deceased was wearing helmet, the severeness of the injury could be reduced. Therefore, the Tribunal had arrived at a conclusion that the non-wearing of helmet amounts to contribution of negligence towards the accident and fixed 10% contributory negligence on the part of the deceased, which is *per se* sustainable. Hence, the contributory negligence fixed by the Tribunal on the part of the deceased is based on proper reasoning and does not required to be interfered with.

8. Now, coming to the question of quantum of compensation awarded by the Tribunal, to compute the income under the head loss of income, no document in support of proof of the income of the deceased has been filed.



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However, it is claimed by the claimants that at the time of accident, the deceased was working in the poultry farm and earned a sum of Rs.15,000/- per month. As per the decision of the Hon'ble Apex Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1) TANMAC 459**, notional income of a vegetable vendor is fixed at Rs.6,500/-, where income of the deceased is not proved through documentary evidence. However, the Tribunal had fixed a sum of Rs.10,000/- as notional income, which is on the lower side since the accident had occurred in the year 2018. Hence, by applying the ratio laid down by the Hon'ble Supreme Court in *Syed Sadiq's* case, fixing a notional income of Rs.14,000/- and adding future prospects at 10%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.15,400/-. Deducting 1/4th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.11,550/- per month and the deceased being aged about 52 years, as evidenced from the records, adopting the multiplier of 11 as fixed by the Apex Court in the case



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of *Sarla Verma and Ors. v. DTC & Ors.* reported in (2009) 6 SCC 121, the
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loss of income to the family is arrived at Rs.11,550/- * 12 * 11 =
Rs.15,24,600/-, which is worked out as follows :-

Loss of Income	Amount in Rs.
Notional income (Per month)	14,000
Add: Future Prospects (Rs.14,000 x 10%) (Per month)	1,400
	15,400
Less: Personal expenses (1/4 th) (Rs.15,400/- x 1/4 th) (Per month)	3850
	11,550
Notional income (per annum) (Rs.11,550/- x 12)	1,38,600
Multiplier	11
Total	15,24,600

9. Further, the Tribunal had awarded a sum of Rs.15,000/- towards funeral expenses; Rs.40,000/- towards consortium; Rs.15,000/- towards loss of estate and Rs.30,000/- towards loss of spouse. This Court finds that the compensation awarded under the heads funeral expenses and loss of estate are just and reasonable and the same does not require any interference. However, insofar as the compensation awarded towards consortium is



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concerned, this Court feels that a sum of Rs.40,000/- to each of the appellants 2 to 5/claimants 2 to 5 would be just and reasonable compensation. Further, the compensation awarded under the head loss of spouse is on the lower side and the same is enhanced to a sum of Rs.40,000/-.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Pecuniary loss	10,89,000/-	15,24,600/- (enhanced)
Funeral Expenses	15,000/-	15,000/-
Consortium	40,000/-	1,60,000/- (enhanced)
Loss of estate	15,000/-	15,000/-
Loss of spouse	30,000/-	40,000/- (enhanced)
Total compensation fixed at	11,89,000/-	17,54,600/-
90% of the compensation	10,70,100/-	15,79,140/-

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed and



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the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.10,70,100/-** to **Rs.15,79,140/-**. The third respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.130 of 2018 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount equally, directly to the bank account of the appellants/claimants through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants/claimants. The appellants/claimants are directed to pay necessary additional Court fee on the enhanced compensation amount. It is made clear that the appellants will not entitled to any interest for the delay period. No costs.

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Speaking Order : Yes / No

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Neutral Citation Case : Yes / No

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To

The Sub Judge, MCOP Tribunal, Rasipuram.