IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1383 of 2024

1.Yasotha
W/o.Late Moorthi

2.Kanishka
D/o.Late Moorthi

3.Minor Harini
D/o.Late Moorthi
represented by her next friend/guardian
Mother Yasotha

4.Sarashwathi
W/o.Late Sundaram ... Appellants

Vs.

1.M/s.Karpaga Vinayaga Blue Mettal,
Having office at Sadayampalayam,
Punnum Post, Aravakurichi Taluk,
Karur District.

2.M/s.The New India Assurance Co. Ltd.,
represented by its Divisional Office,
having office at Sedu Krishna Trade Centre,
2nd Floor, Trichy Main Road,
Gugai, Salem. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor

Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.798 of 2020 on the file of Motor Accident Claims Tribunal, Special District Judge, Salem, dated 08.07.2022.

For Appellants : Mr.S.P.Yuaraj

For Respondents : Mr.C.Ramesh Babu [R2]

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JUDGMENT

The appellants/claimants, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Special District Judge, Salem, have filed this appeal against the award passed in M.C.O.P.No.798 of 2020, dated 08.07.2022.

2. The case of the claimants is that the deceased Moorthi was riding a two wheeler on 24.06.2020 at Pallipalayam Tiruchengode main road and at about 10.10 a.m., near Kaveri R.S.Pirivu, the offending vehicle, which is a Tipper Lorry, was driven in a rash and negligent manner and it hit the two wheeler, as a result of which the deceased was thrown out of the two-wheeler and he died on the spot. It is under these circumstances, the claim petition came to be filed 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 driving on the part of the offending vehicle. Having rendered such a finding, the Tribunal proceeded to determine the compensation and awarded total compensation of Rs.16,75,000/- under various heads as follows:

Sl. No.	*Compensation awarded under the head*	*Amount (in Rs.)*
1.	Loss of income	15,30,000/-
2.	Loss of love and affection	80,000/-
3.	Loss of consortium	40,000/-
4.	Funeral expenses	25,000/-
	Total	**16,75,000/-**

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

4. The claimants, not being satisfied with the compensation awarded by the Tribunal, have approached this Court seeking for enhancement of compensation.

5. Heard Mr.S.P.Yuaraj, learned counsel for appellants/claimants and Mr.C.Ramesh Babu, 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 main ground raised by the appellants is with regard to the notional monthly income fixed by the Tribunal while calculating compensation under the head 'loss of income'. The Tribunal disregarded Ex.P8 - income-tax returns filed in the name of the deceased for the assessment year 2019-20. The Tribunal held that this document was not properly proved through a competent witness and it was marked only through PW-1.

9. On carefully going through Ex.P8, it is seen that the income-tax returns have been filed for the assessment year 2019-20 on 09.10.2019 and it is seen that the gross income earned by the deceased through business and profession was shown as Rs.2,49,256/- annually. This

means the deceased was roughly earning a monthly income of Rs.21,000/-. It is stated that the deceased was an electrician by profession and he has shown his income in the income-tax returns, which ought to have been taken into consideration.

10. The accident in this case had taken place in the year 2020 and the deceased is an electrician by profession. Ex.P8 cannot be completely disregarded just because it was marked through PW-1, who is none other than the wife of the deceased. Considering the facts and circumstances of the case and considering the avocation of the deceased and also Ex.P8, this Court is inclined to fix the notional monthly income at Rs.17,500/-. The deceased was aged about 45 years at the time of his demise and hence 25% can be added towards future prospects and accordingly, the notional monthly income can be fixed at Rs.21,875/-.

11. The Tribunal had applied '17' multiplier in this case, which is not correct and the correct multiplier to be applied is '14'. This mistake has taken place since the Tribunal considered the age of the deceased as 30 years, whereas, the age of the deceased was 45 years. Thus, the

compensation under the head 'loss of income' is calculated as follows:

Monthly Income	:	Rs. 17,500/-
Add: Future Prospects 25% of Rs.17,500/-	:	Rs. 4,375/-

		Rs. 21,875/-
Annual Income (21,875 * 12)	:	Rs. 2,62,500/-
Less : Personal expenses Rs.2,62,500/- * 1/4	:	Rs. 65,625/-

		Rs. 1,96,875/-
Multiplier	:	x 14

Loss of income/dependency	**:**	**Rs.27,56,250/-**
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12. The Tribunal has granted a sum of Rs.80,000/- under the head 'loss of love and affection' and a sum of Rs.40,000/- under the head 'loss of consortium'. Both these heads can be consolidated and a sum of Rs.40,000/- each can be fixed for all the four claimants and a sum of Rs.1,60,000/- can be granted under the head 'loss of love and affection'.

13. The Tribunal has granted a sum of Rs.25,000/- under the head 'funeral expenses' and the same is reduced to Rs.15,000/-. This Court finds that no compensation has been awarded under the head 'loss of

estate' and hence, a sum of Rs.15,000/- is awarded under this head.

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

Sl. No.	***Compensation awarded under the head***	***Amount awarded by the Tribunal (in Rs.)***	***Amount awarded by this Court (in Rs.)***
1.	Loss of income	15,30,000/-	27,56,250/-
2.	Loss of love and affection	80,000/-	1,60,000/-
3.	Loss of consortium	40,000/-	-
4.	Funeral expenses	25,000/-	15,000/-
5.	Loss of estate	-	15,000/-
	Total	**16,75,000/-**	**29,46,250/-**

15. The compensation awarded by the Tribunal at Rs.16,75,000/- is enhanced to Rs.29,46,250/-. 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

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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.12,71,250/- is concerned, the appellants/claimants will not be entitled for interest for the period of delay of 285 days as was ordered by this Court in C.M.P.No.19930 of 2023 in CMA Sr.No.111134 of 2023, dated 04.06.2024. 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 allowed in the above terms. No costs.

21.06.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
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To
The Motor Accident Claims Tribunal,
Special District Judge, Salem.

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