



Civil Miscellaneous Appeal No.1940 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.08.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1940 of 2024

1. Mrs. Dhanalakshmi

2. Sadeesh

3.Minor Ranjith

4.Minor Gayathri

5. Rajeswari

The 3rd and 4th minor petitioners are
Rep. By their Natural guardian and next friend
mother 1st petitioner Dhanalakshmi

... Appellants

Vs.

1. V. Natarajan

[Amended the 1st respondent name as Natarajan
instead of Nagarajan vide Court order dated 24.06.2014 made in
CMP No.12376 of 2024 in CMA SR No.117812 of 2022
by NAVJ]

2. M/s.Tata AIG InsuranceCo Ltd.,
3rd Floor, A.A.Towers, Bye pass road,



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Madurai – 625 016

[Amended as per order in I.A.No.01 /2019
allowed dated 28.11.2019 and
I.A.No.3 of 2019 allowed dated
28.01.2020]

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree made in M.C.O.P.No.318 of 2017 dated 17.09.2021 on the file of the Motor Accident Claims Tribunal (In the Court of the Sessions Judge) at Perambalur.

For Appellant : Mr.N.Vijaya Baskar

For Respondents : Mr.E.Rajadurai
for Mr.M.B.Raghavan for R2

JUDGMENT

The claimants, who are the wife, children and mother of the deceased Nagaraj not being satisfied with the quantum of compensation awarded by the Tribunal have filed this appeal challenging the award passed by Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes, Chennai in M.C.O.P.No.318 of 2017 dated 17.09.2021 .

2. The case of the claimants is that the deceased Nagaraj was



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travelling in a two wheeler on 30.03.2017 at Perambalur to Thuraiyur main road and at about 9.00 a.m, when the vehicle reached near the scene of occurrence, the offending vehicle which was a car was driven in a rash and negligent manner and it came in the opposite direction and dashed on the two wheeler. As a result, the deceased sustained grievous injuries. He underwent treatment in a hospital and unfortunately, he succumbed to the injuries on 20.04.2017. An FIR came to be registered against the driver of the offending vehicle in Crime No.175 of 2017. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of 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 only due to the rash and negligent driving on the part of the driver of the offending vehicle.

4. Having rendered such a finding, the Tribunal found that the deceased was not possessing a valid driving license and therefore, the Tribunal attributed 10% contributory negligence against the deceased.



5. The Tribunal thereafter proceeded to fix the total compensation at Rs.15,43,250/- 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 / Dependency	Rs.11,81,250/-
2.	Consortium to wife	Rs. 40,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Funeral expenses	Rs. 15,000/-
5.	Medical bills	Rs.2,92,000/-
	Total	Rs.15,43,250/-
	Deduction for Contributory negligence is 10% less	Rs. 1,54,325/-
	Compensation payable	Rs.13,88,925/-

Out of the above compensation, a sum of Rs.13,88,925/- (90%) with interest at the rate of 7.5% per annum was directed to be paid by the 2nd respondent insurance company.

6. The claimants not being satisfied with the quantum of compensation fixed by the Tribunal and questioning the 10% contributory negligence attributed against the deceased, have filed this appeal seeking for enhancement of compensation.



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7. Heard Mr.N.Vijaya Baskar, learned counsel for appellant and Mr.E.Rajadurai, learned counsel appeared on behalf of Mr.M.B.Raghavan, learned counsel for 2nd respondent Insurance company.

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

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

10. The first issue is with regard to 10% contributory negligence that was attributed against the deceased. The Tribunal on appreciation of 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 the offending vehicle. However, the Tribunal proceeded to attribute 10% contributory negligence against the deceased only on the ground that the deceased was not having a valid driving license. It is now well settled that a person



driving without a license by itself cannot give rise to an assumption that there was negligence and that he had contributed to the negligence. Useful reference can be made to the judgement of the Apex Court in **[Dinesh Kumar J Vs. National Insurance Company Limited and others]** reported in **2018 1 SCC 750**. Therefore, this Court is inclined to interfere with the findings of the Tribunal attributing 10% contributory negligence on the claimant and the same is hereby set-aside.

11. The next issue is with regard to the quantum of compensation. The deceased at the time of his demise was aged about 37 years. The Aadhar card of the deceased marked as Ex.P16, shows that the deceased was only aged about 37 years at the time of his demise. The claimants came up with a case that the deceased was working as a sculptor on a contract basis and was earning Rs.700/- per day. There was no evidence regarding the occupation of the deceased or the monthly income earned by him. The Tribunal has fixed the notional income at Rs.7,000/-, which is clearly on the lower side.

12. Considering the fact that the accident had taken place in the



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year 2017 and there are nearly five claimants who were dependent on the income of the deceased, this Court is inclined to fix a sum of Rs.14,000/- towards notional monthly income. Considering the age of the deceased as 37 years, 40% can be added towards future prospects. Thus, the compensation under the head of loss of income / dependency is calculated as follows :-

Monthly Income	:	Rs. 14,000/-
Add: Future Prospects 40% of Rs.14,000/-	:	Rs. 5,600/- ----- Rs. 19,600/-
Annual Income (19,600 * 12)	:	Rs. 2,35,200/-
Less : Personal expenses Rs.2,35,200/- * 1/4	:	Rs. 58,800/- ----- Rs. 1,76,400/-
Multiplier	:	x15 -----
Loss of income/dependency	:	Rs.26,46,000/- -----

13. The Tribunal has granted a sum of Rs.40,000/- under the head of consortium to wife alone. No compensation has been granted under the head of loss of love and affection for the other claimants.



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Therefore, this Court is inclined to fix a sum of Rs.1,60,000/- under this head (Rs.40,000 each x 4) for claimants 2 to 5.

14. The compensation that has been granted under the other heads are reasonable and it does not require the interference of this Court.

15. 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 (in Rs.)</i>
1.	Loss of Income / Dependency	Rs.26,46,000/-
2.	Consortium to wife	Rs. 40,000/-
3.	Loss of love and affection Claimants 1 to 4 for Rs.40,000/- each	Rs.1,60,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral expenses	Rs. 15,000/-
6.	Medical bills	Rs.2,92,000/-
	Total	Rs.31,68,000/-

16. The compensation awarded by the Tribunal at Rs.13,88,925/- is enhanced to Rs.31,68,000/-. The Insurance company is directed to



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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 four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. 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.

02.08.2024

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, Motor Accident Claims Tribunal (In the Court of the Sessions Judge)
at Perambalur.



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