



C.M.A.No.3431 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.3431 of 2024

1.Rajeswari
2.Leo Samraj
3.Leediya Sathiya Rupa
4.Minor.Johny Alex Naveen ... Appellants

Vs.

1.Robert Kennady
2.National Insurance Co. Ltd.,
Divisional Office, Bharathidasan Salai
Cabtonment, Trichy -1. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation amount made in Judgment and Decree dated 29.01.2021 made in MCOP.No.1148 of 2016 on the file of the Principal District court, MCOP Tribunal, Perambalur.

For Appellant : Ms.L.Manisha

For Respondents : Mr.S.Arunkumar for R2



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JUDGMENT

The first appellant is the wife, the appellants 2 & 4 are the son and the third appellant is the daughter of the deceased Sahayaraj. The claimants not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal.

2. The case of the claimants is that on 29.07.2016, at about 01.40 AM in the Madurai to Dindigul NH-7 Main Road, opposite to Tafe tractor company, while the deceased Sahayaraj along with other passengers were travelling in Bolero Car bearing Reg. No.TN 45 BB 7612 driven by its driver insured with the second respondent driven by its driver in a rash and negligent manner and dashed on the rear side of a trailer lorry which was parked on the left side of the road. Thereby, the deceased and others caused fatal injuries and died on the spot. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation for a sum of Rs.50,00,000/- for the death of the deceased Sahayaraj.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion



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that the accident had taken place only due to the rash and negligent driving on the part of the driver of the car and awarded Rs.8,86,750/- towards compensation for the death of the deceased under various heads.

4. The claimants not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation.

5. The learned counsel for the appellants submitted that the age of the claimant is aged about 52 years at the time of the accident and he was running a fancy store and working as a V class contractor in the Kodaikanal Municipality and was earning a sum of Rs.20,000/- per month. Without considering the same, the Tribunal has fixed the notional income at Rs.7,500/- which is very meagre. Further, the Tribunal has not awarded compensation towards loss of consortium and loss of love and affection to the children. Therefore, this Court may interfere with the impugned award and modify the same.

6. Per contra, the learned counsel appearing for the second respondent- Insurance Company contended that due to rash and negligent driving of the



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driver of the car, the accident had happened. However, the Tribunal, after considering the evidences and witnesses, has awarded compensation, which is just and proper and the same does not need any opportunity. Hence, this Court may dismiss the petition.

7. Heard the learned counsel for appellants/claimants and the learned counsel for 2nd respondent.

8. This Court has 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 fact in the present case is not in dispute and the manner of the accident is also not in dispute. For enhancement of compensation, the present appeal has been filed.



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11. In the instant case, the deceased was aged about 52 years at the time of the accident and he was running a fancy store and was working as a V class contractor and was earning a sum of Rs.20,000/- per month. The Tribunal has fixed the notional monthly income at Rs.7,500/- including future prospects since there was no proof regarding the avocation or the monthly income of the deceased. The accident had taken place in the year 2016 and the notional monthly income fixed by the Tribunal is very much on the lower side. Considering the age of the deceased, the age of the claimants and also the year in which the accident had taken place, this Court is inclined to fix the notional monthly income at Rs.12,000/-. The age of the deceased was 52 years and 10% future prospects is added. If so, the loss of income /dependency would be:

Monthly Income	:	Rs. 12,000/-
Add: Future Prospects	:	Rs. 1,200/-
10% of Rs.12,000/-		-----
		Rs. 13,200/-
Annual Income	:	Rs. 1,58,400/-
(13,200 * 12)		
Less : Personal expenses		
Rs.1,58,000/- * 1/4	:	Rs. 39,600/-

		Rs. 1,18,800/-
Multiplier	:	x 11

Loss of income/dependency	:	Rs.13,06,800/-



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12. The Tribunal has not awarded any compensation towards loss of love and affection. This Court is inclined to award a sum of Rs.40,000/- (Rs.10,000 x 3) under the head of loss of love and affection as there are three children. The other heads awarded by the Tribunal is just and proper which needs no interference.

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

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of dependency	8,16,750	13,06,800
Loss of consortium	40,000	40,000
Loss of Love and affection		1,20,000
Funeral Expenses	15,000	15,000
Loss of estate	15,000	15,000
Total	8,86,750	14,96,800

14. The compensation awarded by the Tribunal at Rs.8,86,750/- is enhanced to Rs. 14,96,800/-. The liability fixed by the Tribunal is confirmed.



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The second respondent is directed to deposit the entire award amount, 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, the first appellant is entitled to get a sum of Rs.6,96,800/- with interest and costs. The appellants/claimants 2 to 4 are entitled to get a sum of Rs.2,66,600/- each along with interest and costs. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants.

15. In the result, the Civil Miscellaneous Appeal is partly allowed.

No costs.

21.12.2024

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To

The Principal District Court, MCOP Tribunal, Perambalur.



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M.DHANDAPANI,J

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