

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.329 of 2023

1.S.Muthulakshmi

2.A.Subramani

... Appellants

Vs.

1.Y.David

S/o.Yesya

[R1 set *ex parte* in lower Court proceedings

Hence, may be given up]

2.The Manager,

ICICI Lombard General Ins. Co. Ltd.,

No.84 & 85, Arihand Plaza, 1st Floor,

Wall Tax Road, Chennai - 600 003.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.02.2022 made in M.C.O.P.No.4338 of 2016 on the file of Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellants : Mrs.P.T.Saleem Fathima

For Respondents : Mr.M.Jayaraj [R2]

JUDGMENT

The appellants/claimants, who are the parents of the deceased Ravikumar, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai, in M.C.O.P.No.4338 of 2016, dated 14.02.2022, have filed this appeal.

2. The case of the claimants is that the deceased Ravi Kumar was travelling as a pillion rider in a two wheeler on 15.05.2016 at Irumbuliyur Service Road and at about 11.30 p.m., the two wheeler was driven in a rash and negligent manner and the rider of the two wheeler applied sudden brake to avoid hitting a buffalo, which was crossing the road. The two wheeler overturned and the deceased was thrown out of the vehicle. He sustained fatal injuries and died. It is under these circumstances, the claim petition came to be filed before the Tribunal 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 only due to the rash and negligent driving on the part of the driver of the two wheeler. However, the Tribunal attributed 10% contributory negligence on the deceased on the ground that he was not wearing a helmet and that it is only due to the head injuries, resulted in the demise of the deceased. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.17,67,600/- under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of dependency	18,93,931.00
2.	Loss of love and affection	40,000.00
3.	Loss of estate	15,000.00
4.	Funeral expenses	15,000.00
	Total	19,63,931.00
	Less: 10% contributory negligence	1,96,393.10
	Compensation payable	17,67,537.90
	Rounded off to	17,67,600.00

The above compensation was directed to be paid 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 enhancement of compensation.

5. Heard Mrs.P.T.Saleem Fathima, learned counsel for appellants/claimants and Mr.M.Jayaraj, 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 first issue is with regard to 10% contributory negligence fixed by the Tribunal. The Tribunal, on appreciation of evidence, has rendered a categorical finding that the accident had taken place only due to the rash and negligent driving on the part of the rider of the two wheeler. Having rendered this finding, the Tribunal attributed 10%

contributory negligence against the deceased only on the ground that he was not wearing a helmet. The non-wearing of helmet has not actually contributed to the negligence resulting in the accident. Therefore, this Court is inclined to interfere with the said finding and accordingly, the same is hereby set aside.

9. The next issue pertains to the monthly income fixed by the Tribunal. The claimants have examined PW-4, employer of the deceased and Ex.P15 was marked to prove the salary that was earned by the deceased. Even though the salary certificate shows that the deceased was earning a sum of Rs.15,000/- p.m., the Tribunal was not inclined to act upon the salary certificate since no bank statement of the deceased was produced. The Tribunal, thereafter, proceeded to fix the notional monthly income at Rs.12,526/-.

10. The claimants have taken efforts to prove the monthly income of the deceased by examining PW-4. The salary certificate was also marked. Therefore, there is no reason to disbelieve this evidence. That apart, this Court takes into account the fact that the accident had taken

place in the year 2016 and the parents were dependant on the income of the deceased. Therefore, this Court is of the considered view that a sum of Rs.15,000/- can be safely fixed as the monthly income of the deceased. Considering the age of the deceased, 40% can be added towards future prospects. Thus, the compensation under the head 'loss of income/dependency' is calculated as follows:

Monthly Income	:	Rs. 15,000/-
Add: Future Prospects 40% of Rs.15,000/-	:	Rs. 6,000/- ----- Rs. 21,000/-
Annual Income (21,000 * 12)	:	Rs. 2,52,000/-
Less : Personal expenses Rs.2,52,000/- * 1/2	:	Rs. 1,26,000/- ----- Rs. 1,26,000/-
Multiplier	:	x 18 -----
Loss of income/dependency	:	Rs.22,68,000/- -----

11. The Tribunal had granted a sum of Rs.40,000/- under the head 'loss of love and affection' and the same is enhanced to Rs.80,000/- [40,000 x 2].

12. The compensation awarded under other heads is justified and the same does not require the interference of this Court.

13. For the foregoing reasons, the compensation awarded by the Tribunal is modified as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Loss of dependency	18,93,931.00	22,68,000.00
2.	Loss of love and affection	40,000.00	80,000.00
3.	Loss of estate	15,000.00	15,000.00
4.	Funeral expenses	15,000.00	15,000.00
	Total	19,63,931.00	23,78,000.00
	Less: 10% contributory negligence	1,96,393.10	-
	Compensation payable	17,67,537.90	23,78,000.00
	Rounded off to	17,67,600.00	-

14. The compensation awarded by the Tribunal at Rs.17,67,600/- is enhanced to Rs.23,78,000/-. The second respondent insurance company

is directed to deposit the compensation awarded by this Court, 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 six (6)

N.ANAND VENKATESH, J.

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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 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 partly allowed. No costs.

18.07.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To
The Motor Accident Claims Tribunal,
II Judge, Small Causes Court,
Chennai.