



WEB COPY



C.M.A.No.3043 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3043 of 2024

- 1.Veena
- 2.Minor Sruthi
- 3.Minor Kousalya

Minors are rep.by their next friend/guardian/mother,
first appellant

... Appellants

Vs.

- 1.R.Kavitha
- 2.The Divisional Manager,
United India Insurance Company Limited,
No.104-A, Ranga Building, Peramanur Main Road,
Near Four Roads, Salem-636 007.

... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 03.07.2023 made in M.C.O.P.No.159 of 2021 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.



C.M.A.No.3043 of 2024

For Appellants : Ms.L.Manisha
For Respondents : R1-Dispensed with
Mr.J.Chandran for R2

J U D G M E N T

The appellants / claimants, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Special District Court, Krishnagiri, in M.C.O.P.No.159 of 2021, dated 03.07.2023, have filed this appeal.

2. On 30.05.2020, at about 17.15 hours, when the deceased was proceeding in his two wheeler on Hosur to Bangalore NH Road, a Tata Indica Vista Car driven by its driver came from Hosur towards Bangalore in a rash and negligent manner, without making horn and suddenly hit the deceased vehicle on the back side, due to which, the deceased sustained fatal injuries and died on the way to hospital. Under these circumstances, the claim petition came to be filed by the claimants, who are the wife and daughters of the deceased, before the Tribunal seeking for compensation.



C.M.A.No.3043 of 2024

WEB COPY

3. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P1 to P7 were marked. On the side of the respondent No.1, no witness was examined and no documents were marked and on the side of the respondent No.2, R.W.1 was examined and Exs.R1 to R3 were marked. 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 car. The Tribunal also took into consideration the fact that the deceased was not possessing a valid driving license, RC Book and therefore, attributed 15% contributory negligence against the deceased and fixed 85% negligence as against the respondents. Having reached such a finding, the Tribunal proceeded to fix the total compensation at Rs.14,66,250/- under various heads. The above compensation was directed to be paid by the first and second respondents jointly and severally along with interest at 7.5% p.a.



C.M.A.No.3043 of 2024

WEB COPY

4. The claimants, not being satisfied with the quantum of compensation awarded by the Tribunal and aggrieved by the finding that 15% contributory negligence was attributable on the deceased, have filed this appeal seeking compensation.

5. The learned counsel appearing for the appellants submitted that the Tribunal failed to consider the income of the deceased. At the time of accident, the deceased was working as painter and earning a sum of Rs.25,000/- per month, however, the Tribunal has fixed the income of the deceased as Rs.12,000/- per month only and the amount awarded under the heads, loss of consortium, loss of estate and funeral expenses is also very meagre. He further submits that the Tribunal has erroneously attributed 15% contributory negligence on the deceased for not having the valid RC, Driving license and Insurance, at the time of accident, however, mere failure to produce driving license is not sufficient cause to draw adverse inference in respect of contributory negligence. Hence, the learned counsel prays for allowing the appeal.



C.M.A.No.3043 of 2024

WEB COPY

6. The first respondent remained *ex-parte* before the Tribunal.

7. Per contra, learned counsel appearing for the second respondent / Insurance company submits that the accident took place only negligence on the part of the deceased and the deceased was not having valid RC, Driving license and Insurance, at the time of accident, and therefore, the Tribunal has rightly fixed 15% contributory negligence on the deceased and the compensation awarded by the Tribunal is also on the higher side which does not require any interference by this Court. Hence, he prays for dismissal of this appeal.

8. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.



C.M.A.No.3043 of 2024

WEB COPY

9. The factum of the accident is not disputed by the parties.

Therefore, this Court is not entering into the said aspect. The only grievance of the claimants is with regard to the quantum of compensation awarded and the contributory negligence.

10. In the instant case, the deceased was a painter and he was aged about 40 years at the time of accident and the accident had taken place in the year 2020. However, the Tribunal has fixed the notional monthly income at Rs.12,000/- which is on the lower side. Hence, this Court is inclined to enhance the notional monthly income to Rs.15,000/- per month. If so, the loss of dependency would be :

Monthly Income	:	Rs. 15,000/-
Add: Future Prospects 25% of Rs.15,000/-	:	Rs. 3,750/- ----- Rs. 18,750/-
Annual Income (18,750 * 12)	:	Rs. 2,25,000/-



WEB COPY



C.M.A.No.3043 of 2024

Less : Personal expenses		
Rs.2,25,000/- * 1/3	:	Rs. 75,000/-

		Rs. 1,50,000/-
Multiplier	:	x 13

Loss of income/dependency :		Rs.19,50,000/-

11. The amount awarded under the head loss of consortium is modified to one under the head loss of love and affection and a sum of Rs.50,000/- is granted to each of the appellants towards love and affection. The other heads awarded by the Tribunal are reasonable and it does not require any interference of this Court and therefore, the same are hereby confirmed.

12. The next issue is with regard to the contributory negligence that was fastened against the deceased. Admittedly, the deceased has no valid driving licence and not insured the vehicle at the time of accident and therefore, the Tribunal has rightly fixed 15% contributory negligence on the deceased and the same does not require any interference of this Court.



C.M.A.No.3043 of 2024

WEB COPY

13. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads is modified as under:

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1	Loss of dependency	15,60,000/-	19,50,000/-
2	Loss of consortium	1,32,000/-	-
3	Loss of love and affection (Rs.50,000/- * 3)	-	1,50,000/-
3	Loss of Estate	16,500/-	16,500/-
4	Funeral Expenses	16,500/-	16,500/-
	Total	Rs.17,25,000/-	Rs.21,33,000/-
	Contributory negligence 15%	2,58,750/-	3,19,950
	Compensation payable	Rs.14,66,250/-	Rs.18,13,050/-



C.M.A.No.3043 of 2024

WEB COPY

14. In the result, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs.14,66,250/- is hereby enhanced to Rs.18,13,050/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The respondent Nos.1 and 2 are directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.159 of 2021 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri. On such deposit, the first appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn as per the apportionment fixed by the Tribunal by making proper application before the Tribunal. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.



C.M.A.No.3043 of 2024

WEB COPY

15. Insofar as the appellant Nos.2 and 3, viz., the minor daughters of the deceased are concerned, since they are yet to attain majority, the Tribunal is directed to keep their share in deposit in an interest yielding fixed deposit with any one of the Nationalised Banks, initially for a period of three years to be renewed at periodic intervals until the minors attain majority and interest derived from out of the said share of the minors shall be paid to the first appellant/ mother every quarter to be utilised for the welfare of the said minors. Upon attaining majority and upon proper proof being filed substantiating attainment of majority, the Tribunal is directed to transfer the share of the appellant Nos.2 and 3 directly to the Bank account of the appellant Nos.2 and 3 through RTGS. No costs.

22.11.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb



WEB COPY



C.M.A.No.3043 of 2024

To

1.The Motor Accidents Claims Tribunal,
Special District Court, Krishnagiri.

2. The Section Officer,
V.R. Section,
High Court, Chennai.



WEB COPY



C.M.A.No.3043 of 2024

M.DHANDAPANI, J.

ssb

C.M.A.No.3043 of 2024

22.11.2024