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C.M.A.No.3263 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3263 of 2024

1. D.Latha
2. D.Jayapriya
3. D.Antony Nadhava Parsad ... Appellants / Petitioners

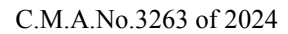
Vs.

1. Rajasekar
2. The Manager,
Reliance General Insurance Co. Ltd.,
T.P.Cell, No.6, Haddows Road,
4th Floor, Chennai - 6. ... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 02.07.2024 made in M.C.O.P.No.185 of 2019 on the file of the Motor Accidents Claims Tribunal, II Judge, Court of Small Causes, Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For R2 : Mr.P.Suresh Srinivasan



Aggrieved by the compensation awarded by the Tribunal in M.C.O.P.No.185 of 2019, the appellants / claimants have come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. The claimants are the daughters and son of the deceased Durai Raj. It is the case of the claimants that, on 04.12.2018, at about 17.30 hrs, while the deceased was walking in the road, a two wheeler bearing Registration No.TN-30-Y-3009 was driven by its rider in a rash and negligent manner and hit against the deceased, due to which, the deceased sustained grievous injuries and died on 15.12.2018. Claiming compensation of Rs.25,00,000/-, the claimants filed the said MCOP claim petition seeking compensation under Section 166 of the Motor Vehicles Act, 1988.

3. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P1 to P23 were marked. No witnesses was examined nor any document was marked on the side of the respondents. The



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Tribunal, after analyzing the oral and documentary evidence available on record, had come to the conclusion that the accident had occurred due to rash and negligent driving of the rider of the two wheeler and awarded a compensation of Rs.5,38,440/- to be paid by the second respondent / Insurance Company.

4. The learned counsel appearing for the appellants / claimants submitted that the Tribunal went wrong in not awarding any amount towards pecuniary loss of the deceased as per Service Certificate-Ex.P20 and Pay Slip-Ex.P21, since the deceased was earning a sum of Rs.25,000/- per month at the time of the accident. He further submitted that the appellants/claimants, who are the married children, are the legal representatives of the deceased and they are certainly entitled to claim compensation. He further submitted that the compensation awarded under the head loss of estate is on the lower side and the same is liable to be enhanced.



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5. Per contra, the learned counsel appearing for the second respondent / Insurance Company submitted that the Tribunal, taking into consideration all the relevant documents, has rightly fixed the compensation, which does not require any interference. He further submitted that the age of all the appellants are above 40 years and it is not the case of the appellants that the appellants are unable to maintain themselves and they are the dependents of their deceased father. Hence, the appellants are not entitled for compensation under the head loss of dependency. Further, the appellants 1 and 2 are married daughters and they are not the dependents of the deceased and not entitled to get compensation and the said issue was rightly considered by the Hon'ble Supreme Court of India in the case of ***Manjuri Bera vs. Oriental Insurance Company Limited and another*** reported in ***2007 AIR 1474*** and the relevant paragraph is extracted hereunder:-

“16. In the impugned judgment, the High Court has correctly drawn a distinction between “right to apply for compensation” and “entitlement to compensation”. The High



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Court has rightly held that even a married daughter is a legal representative and she is certainly entitled to claim compensation. It was further held, on the facts of the present case, that the married daughter was not dependent on her father. She was living with her husband in her husband's house. Therefore, she was not entitled to claim statutory compensation. According to the High Court, the claimant was not dependent on her father's income. Hence, she was not entitled to claim compensation based on “No Fault Liability”.

6. 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.

7. 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 loss of dependency.



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8. From the materials on record, it is seen that the Tribunal has not awarded any compensation under the head loss of dependency on the ground that the appellants who are the daughters and son of the deceased are not the dependents of the deceased, since they are all above 40 years old. However, the said finding of the Tribunal is erroneous. Since the appellants 1 and 2 are the married daughters, undoubtedly they are not entitled to get any compensation under the head loss of dependency. Insofar as the third appellant is concerned who is the son of the deceased, since the deceased was working as mechanic during the time of accident, if the deceased was alive, he may contribute his income to the family of the third appellant, with whom the deceased was living. Hence, this Court is inclined to fix the monthly income of the deceased as Rs.10,000/- and since the third appellant is only the dependent of the deceased, after deducting 50% towards personal expenses, the notional income could be safely fixed at Rs.5,000/- and the deceased was 75 years old at the time of accident, therefore, no future prospects can be added and hence, applying the



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multiplier of “5”, the loss of dependency is arrived at Rs.3,00,000/- (Rs.5,000/- * 5 *12) and the third appellant alone is entitled to get the amount awarded under the head loss of dependency. A sum of Rs.1,000/- awarded under the head loss of estate is enhanced to Rs.15,000/-.

9. 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	-	3,00,000/-
2.	Loss of Parental Consortium	1,20,000/-	1,20,000/-
3.	Funeral expenses	15,000/-	15,000/-
4.	Loss of estate	1,000/-	15,000/-
5.	Medical Expenses and Transport Expenses	4,02,440/-	4,02,440/-
	Total	5,38,440/-	8,52,440/-



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10. In the result, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs.5,38,440/- is hereby enhanced to Rs.8,52,440/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The second respondent / Insurance Company is 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.185 of 2019 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.II, Chennai. Of the amount of Rs.8,52,440/-, except for the amount of Rs.3,00,000/-, which this Court has specifically awarded to the third appellant, the apportionment of compensation of the balance amount as made by the Tribunal stands confirmed. On such deposit being made, the Tribunal is directed to transfer the compensation amount to the share of the respective claimants directly to their bank account through RTGS within a period of two weeks thereafter.



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The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

10.12.2024

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

To

1. The Motor Accidents Claims Tribunal,
Small Causes Court No.II, Chennai.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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M.DHANDAPANI, J.

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10.12.2024