



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.3017 of 2024

1. S.Jayanthi, W/o.Saravanan
2. Minor S.Mythili, D/o.Saravanan
3. Minor S.Chitra, D/o.Saravanan
4. Shantha W/o.Radhakrishnan
5. V.Radhakrishnan S/o.Varadharajan

Minors are rep. By their next friend
and mother first appellant.

... Appellants

Vs.

- 1.D.Ramalingam
2. National Insurance Co. Ltd.,
Divisional Office I, IRN Complex,
Salem-7.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against judgment and decree dated 28.10.2014 in MCOP. No.885/2013 passed by the Motor Accident Claims Tribunal (Special District Judge), Salem.



For Appellant : Mr. K.Varadha Kamaraj

For Respondents : Mrs.R.Sreevidhya R2
R1-NDW

JUDGMENT

The first appellant is the wife, the second and third appellants are daughters and the 4th and 5th appellants are parents of the deceased Saravanan. 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 21.02.2013, at about 11.45 P.M., while the deceased Saravanan was walking on the left side of the road from Ottamedai to Komarapalayam road, in front of Krishnamoorthy House, at that time, a tipper lorry bearing Reg. No.TN 21 X 6377 driven by its driver came from the opposite direction, in a rash and negligent manner, hit against the deceased Saravanan, due to which, he 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.15,00,000/-



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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 lorry and awarded Rs.8,37,000/- towards compensation for the death of the deceased Saravanan 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 37 years at the time of the accident and he was working as power loom weaver and earned a sum of Rs.12,000/- per month. Without considering the same, the Tribunal has fixed the notional income at Rs.4,500/- which is very meagre. Further, the Tribunal has awarded only Rs.20,000/- towards loss of consortium and Rs.20,000/- towards loss of consortium to the wife and Rs.70,000/- towards loss of love and affection to the children and parents which are also too low and the Tribunal has



not awarded any compensation in respect of loss of estate. 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 driver of the lorry, 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 appellant/claimant 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.



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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.

11. In the instant case, the deceased was aged about 37 years at the time of the accident and he was working as a power loom weaver and was earning a sum of Rs.12,000/- per month. The Tribunal has fixed the notional monthly income at Rs.4,500/- including future prospects since there was no proof regarding the avocation or the monthly income of the deceased. The accident had taken place on 21.02.2013 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.9,000/-. The age of the deceased was 37 years and therefore, 40% is added towards future prospects. If so, the loss of income /dependency would be:



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Monthly Income	:	Rs. 9,000/-
Add: Future Prospects	:	Rs. 3,600/-
40% of Rs.9,000/-		-----
		Rs. 12,600/-
Annual Income	:	Rs. 1,51,200/-
(12,600 * 12)		
Less : Personal expenses		
Rs.1,51,200/- * 1/4	:	Rs. 37,800/-

		Rs. 1,13,400/-
Multiplier	:	x 15

Loss of income/dependency	:	Rs.17,01,000/-

12. The Tribunal has awarded only a sum of Rs.25,000/- and Rs.70,000/- under the head of loss of consortium and love and affection respectively. This Court is inclined to fix a sum of Rs.40,000/- each (Rs.40,000 x 5) under the head of loss of consortium and loss of love and affection as there are five dependents. The Tribunal has not awarded any amount towards loss of estate. Hence, this Court is inclined to award a sum of Rs.15,000/- towards loss of estate. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, which is higher side and the same is reduced to Rs.15,000/-. Further The Tribunal has deducted



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10% award amount for income tax. The accident is in the year 2013, at the relevant point of time, there is no practice in deducting the tax. Therefore, the Tribunal was not right in deducting 10% income tax against the claimants. Hence, the finding of the Tribunal in respect of 10% income tax is hereby interfered and set aside.

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	8,10,000	17,01,000
Love and affection	70,000	1,60,000
Loss of Consortium	25,000	40,000
Funeral Expenses	25,000	15,000
Loss of estate		15,000
Total	9,30,000	19,31,000

14. The compensation awarded by the Tribunal at Rs.9,30,000/- is enhanced to Rs. 19,31,000/-. The liability fixed by the Tribunal is



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confirmed. 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 and thereafter, the same may be recover from the first respondent. Insofar as the enhanced compensation of Rs.9,30,000/- is concerned, the appellants/claimants will not be entitled for interest for the period of delay of 1803 days as was ordered by this Court in C.M.P.No.27599, dated 22.10.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants. The appellants 1 to 3 are entitled to get the award amount Rs.5,00,000/- each with proportionate interest and costs. The appellants 4 & 5 are entitled to get the award amount Rs.2,15,500/- each along with proportionate interest and costs. In respect of the minor share, the Tribunal shall deposit the said amount in a Fixed Deposit in any of the nationalized bank for a period of one year and renewable thereafter. Upon attaining majority, the appellants 2 & 3 are directed to withdraw the award amount. Till they attains majority, the first appellant is permitted to withdraw the interest amount periodically.



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15. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

20.11.2024

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To,

The Judge,

Motor Accident Claims Tribunal (Special District Judge), Salem.



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M.DHANDAPANI.,J

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Civil Miscellaneous Appeal No.3017 of 2023

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