



CMA.No.4106 of 2019

CMA.No.4106 of 2019

WEB C **M.DHANDAPANI, J.**

Today, this matter is listed under the caption “For Being Mentioned” at the instance of the learned counsel for the petitioner.

2. Learned counsel for the petitioner submitted that in Paragraph 1 of the order dated 12.11.2024, the rank of the Tribunal was wrongly mentioned as Motor Accident Claims Tribunal, III Additional District Judge, Vellore instead of Motor Accident Claims Tribunal (I Additional District Court), Erode. Therefore, the learned counsel seeks modification of the same in the order copy.

3. On consideration of the submission made by the learned counsel for the petitioner, the first paragraph of the order of this Court dated 12.11.2024 passed in C.M.A.No.4106 of 2019, shall stand substituted as follows:-

“This Civil Miscellaneous Appeal is filed against the judgment and decree passed in M.C.O.P.No.669 of 2011 dated 11.09.2013 on the file of Motor Accident Claims Tribunal, I Additional District Court, Erode.”



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CMA.No.4106 of 2019

M.DHANDAPANI, J.

Anu

4. All the other observations made in the earlier order dated 12.11.2024 shall remain intact.

5. Registry is directed to carry out the necessary correction as aforesaid in the order dated 12.11.2024, in the decree as well, and issue a fresh copy of the order and decree to the learned counsel for the parties.

03.02.2026

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CMA.No.4106 of 2019



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CMA.No.4106 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

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THE HONOURABLE MR.JUSTICE M. DHANDAPANI

C.M.A.NO.4106 OF 2019

1.Mallika

2.Navaneetham

... Appellants

/vs/

1. Dowlath

2. Rajani

3. The New India Insurance Co. Ltd.,

Bagalur Mansion, II Floor,

Big Bazaar, Kolar,

Karnataka 563 101

4. K. Suresh

5. V.Subramaniam

6. The United India Insurance Co. Ltd.,

Kumar Complex,

Car Street, Tiruchengode,

Namakkal District.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the fair and decreetal order dated 11.09.2013 passed in M.C.O.P.No.669 of 2011 on the file of the Motor Accident Claims Tribunal (I Addl. District Court), Erode for enhancement of compensation.

For Appellants

For Respondents

...

Mr.K. Govi Ganesan

Mr.S.Dhakshnamoorthy for R3

Mr. C. Paranthaman for R6



CMA.No.4106 of 2019

R1, R2, R4 and R5 -No appearance

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JUDGMENT

This Civil Miscellaneous Appeal is filed against the judgment and decree passed in M.C.O.P.No.258 of 2014 dated 12.04.2017 on the file of Motor Accident Claims Tribunal, III Additional District Judge, Vellore

2. The facts leading to filing of this Civil Miscellaneous Appeal is as follows:-

(i) That on 14.03.2011 at about 10.10 a.m., the 4th respondent was riding the bike bearing Reg.No.TN 34 A 4927 in a rash and negligent manner on the Kuppam-Krishnagiri Road towards Krishnagiri, one Thirunavukkaasu was travelling as a pillion rider. At that time, the 1st respondent drove the Eicher Van bearing Reg.No.KA 08 3040, in the opposite direction, in a rash and negligent manner. Both the vehicles collude with each other and due to the accident, the rider and pillion rider of the two wheeler sustained simple and grievous injuries. Immediately they were taken to Krishnagiri Govt. Hospital, where, the pillion rider-Thirunavukkarasu succumbed to injuries.



CMA.No.4106 of 2019

(ii) At the time of accident, the deceased Thirunavukkarasu was aged 30 years and was hale and healthy and was employed as a Bore Well Manager in Balaji Bore Well Company and was earning a sum of Rs.10,000 per month as salary. Due to sudden death of the deceased, the petitioners who are mother and sister of the deceased, suffered great mental agony and monetary loss.

(iii) Since the accident had occurred due to the rash and negligent driving of both the vehicles viz., two wheeler and Eicher Van, the claimants/appellants herein moved a claim petition before the Motor Accident Claims Tribunal, Erode District at Erode claiming compensation of Rs.5,00,000/- along with 12% interest and cost.

(iv) They filed the claim petition against the 1st, 2nd and 3rd respondents who are respectively the driver, owner and insurer of Eicher Van and against the 4th, 5th and 6th respondents, who are respectively the rider, owner and insurer of the two wheeler stating that they are jointly and severally liable to pay compensation.

(v) Before the claims tribunal, on the side of the claimants, witnesses PW1 and PW2 were examined and exhibits Ex.P.1 to Ex.P.4 were marked. On the side of the respondents, RW1 and RW2 were examined as witness and



CMA.No.4106 of 2019

Ex.R1 to Ex.R.8 were marked.

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(vi) The tribunal, on appreciation of oral evidence and documents, fixed the liability of negligence on the drivers of both the vehicles equally at 50% :: 50% and arrived at a total compensation of Rs.3,44,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

(vii) The compensation arrived at by the tribunal under the conventional heads are tabulated as follows:

S.No.	Conventional Heads	Amount
1.	Loss of Income	Rs.2,88,000
2	Loss of love and affection	Rs. 50,000
3	Funeral Expenses	Rs. 6,000
	Total	Rs. 3,44,000

(viii) Aggrieved against the quantum of compensation awarded passed by the tribunal, the appellants /claimants have preferred the present Civil Miscellaneous Appeal.

3. Learned counsel for the appellant would submit that the claims



CMA.No.4106 of 2019

tribunal having failed to see that it is a case of fatal, ought to have awarded more compensation, however, it awarded a total compensation of Rs.3,44,000/- for the death of the deceased. Though PW1, in her evidence has categorically stated that the salary of the deceased was Rs.10,000/- per month, it fixed the notional income of the deceased only at Rs.6000/- and had erroneously deducted 50% instead of $\frac{1}{3}$ rd towards personal expenses. Towards love and affection and funeral expenses, the Tribunal has awarded Rs.50,000/- and Rs.6000/- respectively. The amounts awarded as compensation under the above said heads are very very meagre. As per the *Sarla Verma's case*, the deceased is entitled to notional income of Rs.9,000 to Rs.10,000/-, hence the notional income of Rs.6000/- fixed by the tribunal is not sustainable.

4. Further, the learned counsel for the appellants submitted that though the tribunal had come to a conclusion that the 1st respondent/driver of the Eicher vehicle did not possess any valid driving licence, the liability is fastened as against the 2nd respondent/owner of the Eicher vehicle instead of 3rd respondent/Insurer of Eicher vehicle, however, as per the dictum laid down in the Apex Court, even in the absence of driving licence, the Insurance company

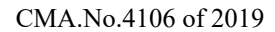


CMA.No.4106 of 2019

will pay the compensation and later, recover the amount from the owner of the vehicle. Such a finding was not granted in favour of the appellant. Hence the finding in respect of the above aspect needs to be interfered with. He further submitted that after elaborate trial, the Claims Tribunal fixed the liability at 50% as against the 2nd respondent/owner of the Eicher vehicle and 50% as against the 6th respondent/insurer of the two wheeler instead of fixing liability on the 3rd respondent on the ground that at the time of accident, the 1st respondent did not possess valid driving licence. Accordingly, he prayed for allowing the appeal.

5. Per contra, the learned counsel appearing for the 3rd respondent/Insurance company submitted that since the 1st respondent/driver of Eicher vehicle did not possess valid driving licence, the trial court has rightly fixed 50% liability on the 2nd respondent/owner of the Eicher vehicle which cannot be interfered with. In respect of quantum of compensation, the compensation awarded by the tribunal is just and reasonable. Therefore, he

Page No.8 of 2



6. Learned counsel for the 6th respondent submitted that the apportionment fixed by the tribunal in respect of liability need not be interfered with and the compensation fixed by the tribunal is just and reasonable. Thus, he prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellants/claimants and the learned
counsels appearing for the 3rd respondent/Insurance company as well as learned
counsel appearing for the 6th respondent/Insurance company.

8. The 1st, 2nd, 4th and 5th respondents were already set apart before the claims tribunal. The appellant herein has dispensed with the appearance of the respondents 1,2,4 and 5 and to that effect, he has also made an endorsement. It is seen that the appeal is filed for enhancement of compensation awarded by the tribunal. The claims tribunal had fixed



CMA.No.4106 of 2019

negligence at 50% as against the respondents 1 to 3 and 50% as against the

respondents 4 to 6. This court is of the view that there is no need to discuss

with regard to negligence aspect. Such a finding rendered by the tribunal based

on the evidence need not be interfered with, however, the tribunal fastened the

liability as against the 2nd respondent instead of 3rd respondent on the ground

that the 1st respondent/driver of Eicher Vehicle did not possess any valid driving license. As per the decision of the Apex Court in the case of

Jawahar Singh Vs. Bala Jain and others reported in ***2011(6) SCC 425***, the

Insurance Company of the offending vehicle has to pay the compensation and

then recover the same from the owner of the vehicle, but the same was not

applied in the present case. In view of the decision of the Apex Court, as stated

above, this court fastens the liability of payment of compensation at 50% with

the 3rd respondent/Insurance Company/insurer of the Eicher vehicle and grants

liberty to the 3rd respondent to recover the same from the 2nd respondent/owner of the Eicher vehicle.



CMA.No.4106 of 2019

9. In respect of quantum of compensation fixed by the claims tribunal, the

notional income of the deceased was fixed by the tribunal at Rs.6000 , which appears to be very low as rightly pointed by the appellant. As per *Sarla Verma* 's case, this court fixes the notional income of the deceased at Rs.9000/- instead of Rs.6000/-. As the deceased is an unmarried person, 50% is deducted towards his personal expenses, then his income would be Rs.4,500/- p.m. After adding 40% of future prospectus (1800 + 4500 = 6300) to his income and applying appropriate multiplier of 17, the total loss of income of the deceased would be calculated as follows:

$$6300 \times 12 \times 17 = 12,85,200$$

Therefore, for loss of income, this court awards Rs.12,85,200/-. For loss of love and affection, this court awards a sum of Rs.80,000/- instead of Rs.50,000/- and towards funeral expenses, this court awards Rs.20,000/- instead of Rs.6000/- since this court feels that the compensation awarded by tribunal under the above heads are very very meagre. In addition to that, towards loss of estate, this court awards Rs.15,000/- as compensation.

10. Thus, the enhanced compensation awarded by this court is tabulated as under.

Page No.11 of 2



CMA.No.4106 of 2019

S.No.	Conventional Heads	Amount
1.	Loss of Income [6300 x 12x17]	Rs. 12,85,200
2	Loss of love and affection	Rs. 80,000/-
3	Funeral Expenses	Rs. 20,000/-
4	Loss of Estate	Rs. 15,000
	Total	Rs. 14,00,000/-

11. The 3rd respondent/Insurance Company and 6th respondent/Insurance Company are directed to deposit the compensation amount in the ratio of 50:50 equally along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The 3rd respondent/Insurance company is granted liberty to recover the amount from the 2nd respondent/owner of Eicher vehicle.

12. In the result,

- the Civil Miscellaneous is allowed. No costs.



CMA.No.4106 of 2019

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- Accordingly, the 3rd respondent/Insurance company and 6th respondent/Insurance Company are directed to deposit the enhanced compensation amount awarded by this court along with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation in the ratio of 50:50 equally, less the amount, if any, already deposited.
- The 3rd respondent/Insurance company is granted liberty to recover the amount from the 2nd respondent/owner of Eicher vehicle.
- On such deposit, the appellants are permitted to withdraw the entire compensation amount awarded by this court, less the amount, if any, already withdrawn, on making appropriate application before the trial court.
- The appellants are directed to pay the appropriate court fee for the enhanced compensation granted by this court.

12.11.2024



CMA.No.4106 of 2019

msr

Index:yes/no

Internet:

To

The Motor Accident Claims Tribunal (I Addl. District Court), Erode

M. DHANDAPANI, J.

msr

C.M.A.NO.4106 OF 2019

12.11.2024