



C.M.A.(MD) No.540 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.540 of 2024

1.Nilavar Nisha
W/o.Akbar Basha

2.Minor.Thaiyuba Dhasnim
S/o.Akbar Basha

3.Thamina Dhasnim (Minor),
D/o.Akbar Basha

... Appellants

[2nd and 3rd appellants are minors represented by
their mother and natural guardian 1st appellant]

Vs.

1.S.Sekar
S/o.Sethurajan

2.New India Assurance Company Limited,
Branch Office, Jerome Building,
Kottai Station Road, Trichy.

... Respondents

[R1 remained *ex parte* before the Tribunal. Notice to R1 was
dispensed with, by the order of this Court dated 03.06.2024]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor
Vehicles Act, 1988 to modify the order dated 03.01.2022 in M.C.O.P.No.



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1427 of 2015 on the file of the Motor Accident Claims Tribunal/Special District Judge, Tiruchirappalli and award further enhancement of compensation of Rs.10,00,000/-.

For Appellants : Mr.N.Sudhagar Nagaraj

For R2 : Mr.C.Karthick

J U D G M E N T

The instant appeal has been filed by the claimants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal (Special District Judge), Tiruchirappalli, *vide* its Judgment and Decree dated 03.01.2022 passed in M.C.O.P.No.1427 of 2015.

2. The appellants filed a claim petition before the Tribunal, stating that on 22.09.2015 at about 02.30 p.m., while the deceased was driving his Car bearing Registration No.TN-45-AY-8811 with his friends, an Eicher Van bearing Registration No.TN-51-AA-4641, owned by the first respondent and insured with the appellant, Insurance Company, came in a rash and negligent manner and collided with the Car, as a result of which the deceased sustained fatal injuries, and his friends suffered grievous injuries. The other injured parties filed separate claim petitions for the



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injuries they sustained, which were also disposed of by the Tribunal *vide* a common Judgment, including the claim petition filed by the appellants.

3. The first respondent herein, the owner of the insured vehicle, remained *ex parte* before the Tribunal.

4. The second respondent, Insurance Company, filed a counter before the Tribunal, stating that the accident took place only due to the rash and negligent driving of the deceased; that the van driver did not have a valid driving licence at the time of the accident; and that in any case, the compensation claimed by the appellants was excessive.

5. Before the Tribunal, the appellants and the other injured claimants examined P.W.1 to P.W.4 and marked Exs.P1 to P26. The second respondent, Insurance Company, examined R.W.1 and R.W.2 and marked Exs.R1 to R4. Apart from the above, Exs.X1 to X5 and Exs.C1 and C2 were marked.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the



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rash and negligent driving of the van driver and directed the second respondent to pay compensation of Rs.12,22,000/- to the appellants and recover the same from the first respondent, the owner of the insured vehicle.

7. The learned counsel for the appellants submitted that though the appellants had established that the deceased was working as a driver and earning nearly Rs.15,000/- per month, the Tribunal had adopted a meagre notional income of Rs.6,000/- per month and therefore prayed for enhancement of the compensation.

8. Since the first respondent, the owner of the insured vehicle, has remained *ex parte* before the Tribunal, the notice to him was dispensed with by this Court, *vide* order dated 03.06.2024.

9. The learned counsel for the second respondent, Insurance Company, per contra, submitted that the compensation awarded by the Tribunal is just and reasonable, and therefore, no interference is called for.



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10. The only point for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable.

11. The manner of the accident and the liability are not in dispute. The ground raised by the appellants is that though the appellants had established that the deceased was having a valid driving licence and was employed as a driver, the Tribunal had taken a sum of Rs.6,000/- per month as the notional income of the deceased. This Court is of the view that the avocation of the deceased has been established by the appellants through the evidence of P.W.1, the wife of the deceased, and by production of the Driving Licence of the deceased (Ex.P5). However, the appellants have not established the exact income earned by the deceased at the time of the accident.

12. Considering the avocation of the deceased, his age at the time of the accident, and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased at Rs.10,000/- per month. 40% has to be added towards future prospects. The multiplier applicable is 16. Since there are three dependents, 1/3rd has to be deducted towards personal expenses. Hence, the compensation



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under the head 'loss of dependency' has to be **Rs.17,92,000/-** [Rs.10,000/-

WEB COPY + 40/100 x 12 x 16 x 2/3].

13. The compensation under the other heads except for 'loss of consortium, which has to be enhanced to Rs.40,000/- each to the claimants, is just and reasonable and is therefore confirmed. Thus, the total compensation is modified as follows:

<i>Sl. No</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of Dependency	Rs.10,75,200/-	Rs.17,92,000/-	Enhanced
2	Transport Charges	Rs. 10,000/-	Rs. 10,000/-	Confirmed
3	Medical Bills	Rs. 11,800/-	Rs. 11,800/-	Confirmed
4	Loss of Consortium to the 1 st claimant	Rs. 35,000/-	Rs. 40,000/-	Enhanced
5	Loss of Parental consortium to the 2 nd and 3 rd claimants	Rs. 70,000/-	Rs. 80,000/-	Enhanced
6	Funeral Expenses	Rs. 10,000/-	Rs. 10,000/-	Confirmed
7	Loss of Estate	Rs. 10,000/-	Rs. 10,000/-	Confirmed
Total		Rs.12,22,000/-	Rs.19,53,800/-	Enhanced by Rs.7,31,800/-

14. The other finding of the Tribunal as regards the pay and recovery is confirmed.



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16. The finding of the Tribunal granting liberty to the second respondent, Insurance Company, to pay and recover the compensation is confirmed. The second respondent, Insurance Company, is entitled to recover the said compensation from the first respondent, the owner of the insured vehicle, as per the guidelines issued by the Hon'ble Supreme Court in the case of **Nanjappa Vs. State of Karnataka**, reported in 2015 (1) SCC 550.

17. The appellants are entitled to the compensation, as per the apportionment fixed by the Tribunal.



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18. The first claimant is permitted to withdraw her share along with the proportionate interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

19. Since the second and third claimants are minors, their shares are directed to be deposited in an interest-bearing fixed deposit [F.D.] in any nationalized bank until they attain majority. The first claimant is permitted to withdraw the accrued interest once every six months.

20. The appellants/claimants are directed to pay the necessary court fee, if any, for the enhanced amount of compensation.

21. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs.

03.09.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order
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Copy To:

1.The Special District Judge,
Motor Accident Claims Tribunal,
Tiruchirappalli,
Tiruchirappalli District.



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2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court,
Madurai.



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SUNDER MOHAN, J.

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