



C.M.A.(MD) No.370 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

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1.Ponnammal
W/o.Late Mookiah

2.Muthulakshmi
W/o.Balasubramanian

3.Paramasivan
S/o.Late Mookiah

4.Ganapathy
S/o.Late Mookiah

... Appellants

Vs.

1.Jayakumar
S/o.Karnan

2.Jaheer Hussain

3.The Branch Manager,
The Reliance General Insurance Company Ltd.,
2nd Floor, Sona Tower,
Palani Road, Dindigul Town,
Dindigul.

... Respondents

[R1 & R2 were set *exparte* before the Tribunal]



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Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the compensation awarded by the Motor Accident Claims Tribunal (Principal District Court), Dindigul in M.C.O.P.No.691 of 2019 *vide* its Judgment and Decree dated 13.12.2023.

For Appellants : Mr.S.Pugalendhi

For R1 : Mr.V.Sakthivel

J U D G M E N T

The claimants have preferred the instant appeal seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal (Principal District Court), Dindigul, in M.C.O.P.No.691 of 2019 *vide* its Judgment and Decree dated 13.12.2023.

2. The appellants filed a claim petition in M.C.O.P.No.691 of 2019 before the Tribunal stating that on 02.06.2019, while the deceased was walking along on the ride of a road towards Dindigul, the driver working under the first respondent drove the Maxi Cab bearing Registration No.TN-20-CY-5279 in a rash and negligent manner and dashed against the deceased, as a result of which the deceased sustained grievous injuries and succumbed to the injuries.



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WEB COPY 3. The driver and the owner of the offending vehicle had remained *ex parte* before the Tribunal.

4. The third respondent Insurance Company filed a counter statement stating that the accident did not take place due to the negligence of the driver of the insured vehicle and that, in any case, the compensation claimed by the appellants/claimants is excessive.

5. Before the Tribunal, the appellants/claimants examined one witness as P.W.1 and marked Exs.P1 to P6. The third respondent, Insurance Company, examined one witness as R.W.1 and marked Exs.R1 to R4.

6. The Tribunal, after taking into consideration the oral and documentary evidence, found that the driver of the insured vehicle had driven the vehicle in a rash and negligent manner, and directed the third respondent Insurance Company to pay the compensation of Rs.2,22,000/- to the appellants/claimants.



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7. The learned counsel for the appellants/claimants submitted that though they had established that the deceased was earning a monthly income of Rs.15,000/-, the Tribunal fixed a meagre notional income of Rs.6,000/- per month; and that the compensation under the head of loss of love and affection was not in accordance with the guidelines issued by the Hon'ble Supreme Court.

8. Since the first and second respondents had remained *exparte* before the Tribunal, notice to the first and second respondents is dispensed with.

9. The learned counsel for the third respondent Insurance Company, per contra, submitted that the deceased was aged 73 years at the time of the accident and the appellants/claimants had neither established the avocation nor the income of the deceased, and in such circumstances, the compensation awarded by the Tribunal is just and reasonable.

10. The learned counsel for the third respondent Insurance Company further submitted that the award under the other heads is also just and reasonable and no interference is called for.



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11. This Court has carefully considered the rival submissions made by the learned counsel for the appellants/claimants and the learned counsel for the third respondent Insurance Company.

12. The only question involved in the instant appeal is whether the quantum of compensation awarded by the Tribunal is just and reasonable.

13. The appellants/claimants had examined the third appellant/third claimant, who is the son of the deceased, as P.W.1. P.W.1, in his deposition, stated that his deceased father was doing masonry work. However, this Court finds that no documents have been produced either to prove the avocation or the income of the deceased. Considering the year of the accident, the oral evidence of P.W.1, and the age of the deceased, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.8,000/- per month.

14. The deceased was survived by four family members, namely the appellants. The second to fourth appellants are married children of the deceased and are not dependents. Since the first appellant is the only



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dependent of the deceased, $1/3^{\text{rd}}$ has to be deducted towards personal expenses. The multiplier applicable is 5, and not 3, as adopted by the Tribunal. Therefore, the award of compensation under the head of loss of dependency is modified as follows:

Loss of Dependency:

(Age of the deceased - 73)

Monthly Notional Income - Rs.8,000/-

Annual Income
(Rs.8,000 x 12) : Rs.96,000/-

Less : Personal Expenses at $1/3^{\text{rd}}$
[96,000 x $1/3$] : Rs.32,000/-

: Rs.64,000/-

Multiplier - 5 [Rs.64,000/- x 5] - **Rs.3,20,000/-**

15. The Tribunal has awarded only Rs.40,000/- to all the appellants/claimants under the head of loss of love and affection. As per the settled position of law, each of the appellants/claimants is entitled to Rs.40,000/-, totaling Rs.1,60,000/- (Rs.40,000/- x 4).



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16. The Tribunal has not awarded any compensation under the head of loss of estate. A sum of Rs.15,000/- is therefore awarded under the head of loss of estate. The award under the other heads is confirmed.

17. The total compensation of Rs.2,22,000/- awarded by the Tribunal is enhanced to Rs.5,15,000/- as follows:

<i>Sl. No</i>	<i>Description</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.1,62,000/-	Rs.3,20,000/-	Enhanced
2	Loss of Love and Affection	Rs. 40,000/-	Rs.1,60,000/-	Enhanced
3	Loss of Estate	-	Rs. 15,000/-	Granted
4	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
5	Transport Expenses	Rs. 5,000/-	Rs. 5,000/-	Confirmed
Total		Rs.2,22,000/-	Rs.5,15,000/-	Enhanced by Rs.2,93,000/-

18. The third respondent Insurance Company is directed to deposit the above enhanced amount of Rs.5,15,000/- together with interest at 7.5% per annum from 13.09.2019 until the date of realization and costs, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment.



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19. On such deposit, the appellants/claimants shall be entitled to the same as per the apportionment fixed by the Tribunal. The appellants/claimants are permitted to withdraw their shares with interest and costs, less the amount already withdrawn, if any, by filing a suitable applications before the Tribunal.

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

No costs.

12.08.2024

Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

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Copy To:

- 1.The Principal District Judge,
Motor Accident Claims Tribunal,
Dindigul.
- 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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