



C.M.A.(MD) No.978 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

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1.Dhandapani
S/o.Dhasan Nayakkar

2.Angalaeswari
W/o.Karuppasamy

3.Ramuthai
W/o.Ganesan

4.Muniyammal
W/o.Rajendran

5.Sivanjyothi
W/o.Gurunathan

6.Lakshmana Kumar
S/o.Dhandapani

... Appellants

Vs.

1.The President,
Seva Bharathi,
Govindam Koil Road,
Kottaiyam,
Kerala State.

2.The Branch Manager,
The United India Insurance Company Ltd.,
GeethaTrade Center,



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M.C.Road, Nagambadome,
Kottaiyam,
Kerala State.

... Respondents

[R1 was set *exparte* before the lower court]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to enhance the compensation awarded in M.C.O.P.No.668 of 2019 dated 09.01.2024 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dindigul.

For Appellants : Mr.S.Pugalendhi

For R2 : Mr.J.S.Murali

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal (Additional District Court) Dindigul in M.C.O.P.No.668 of 2019 *vide* its Judgment and Decree dated 09.01.2024.

2. Since the first respondent, the owner of the offending vehicle, had remained *exparte* before the Tribunal, notice to the first respondent is dispensed with.



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3. The appellants/claimants filed a claim petition in M.C.O.P.No. 668 of 2019 before the Tribunal, stating that on 17.01.2018 at about 12.00 p.m., while the deceased was travelling along with the appellants/claimants in their car bearing Registration No.TN-07-AY-2791, an ambulance van bearing Registration No.KL-05-AG-7354 owned by the first respondent and insured with the second respondent Insurance Company came in the opposite direction in a rash and negligent manner and dashed against the car, as a result of which, the deceased sustained grievous injuries and succumbed to the injuries.

4. Before the Tribunal, the first respondent owner of the ambulance van had remained *exparte*. The second respondent Insurance Company had filed counter stating that the accident did not take place due to the negligence of the insured ambulance van; that the claim made by the claimants is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the first appellant/first claimant has examined himself as P.W.1 and the appellant/claimants marked Exs.P1 to P7. The respondents have neither examined any witnesses nor marked any documents.



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6. The Tribunal after taking into consideration of oral and documentary evidence held that the accident took place due to the rash and negligent driving of the driver of the insured ambulance van and awarded a compensation of Rs.13,05,000/- payable by the second respondent Insurance Company to the appellants/claimants.

7. In the instant appeal, the appellants/claimants seek for enhancement of the aforesaid compensation.

8. The learned counsel for the appellants/claimants submitted that though they had established the avocation of the deceased, the Tribunal had fixed meagre notional income of Rs.8,000/- per month; that the compensation awarded by the Tribunal under the head of loss of love and affection, amounting to Rs.15,000/- each for the second to sixth appellants/second to sixth claimants, is contrary to the settled law and therefore sought for enhancement.

9. The learned counsel for the second respondent Insurance Company, per contra, submitted that the appellants/claimants have neither established the avocation nor the income of the deceased and in such



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circumstances, the notional income fixed by the Tribunal at Rs.8,000/- per month is just and reasonable; that the compensation under other heads is also reasonable and no interference is called for.

10. The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

11. The accident is of the year 2018. The first appellant/first claimant who is the husband of the deceased had examined himself as P.W.1. He had deposed that the deceased was selling vegetables and was earning a monthly income of Rs.15,000/-. However, no document has been produced to substantiate the income earned by the deceased.

12. Considering the fact that the appellants/claimants have established the avocation of the deceased and the fact that the accident is of the year 2018, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.12,000/- per month. Admittedly, the deceased was aged about 50 years at the time of accident and hence, income towards future prospects has to be added at 25% and the multiplier applicable is 13. In view of number of dependents, 1/4th of



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the income has to be deducted towards personal expenses. Therefore, the compensation awarded under the head of loss of income is modified as follows:-

(Age of the deceased - 50)

Notional Monthly Income : Rs.12,000/-

Add: Future Prospects at 25%
[Rs.12,000/- x 25/100] : Rs. 3,000/-

: Rs.15,000/-

Less : Personal Expenses at 1/4th
[Rs.15,000/- x 1/4] : Rs. 3,750/-

: Rs.11,250/-

Annual contribution to the family
[Rs.11,250/- x 12] - Rs.1,35,000/-

Multiplier - 13 [Rs.1,35,000/- x 13] - Rs.17,55,000/-

13. The award under the head of funeral expenses and transport charges is confirmed. The Tribunal has awarded a sum of Rs.40,000/- to the first appellant/first claimant under the head of 'loss of consortium' and Rs.15,000/- each to the second to sixth appellants/second to sixth claimants under the head of 'loss of love and affection'. The Tribunal ought to have also awarded the compensation of Rs.40,000/- each to the



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second to sixth appellants/second to sixth claimants under the head of 'loss of consortium' instead of 'loss of love and affection'. Rs.2,00,000/- (Rs.40,000/- x 5) is awarded under the head of 'loss of consortium' to the second to sixth appellants/second to sixth claimants. Compensation awarded to the first appellant/first claimant under the head of 'loss of consortium' is confirmed. The Tribunal has not awarded any compensation under the head of 'loss of estate'. Therefore, Rs.15,000/- is awarded under the head of 'loss of estate'.

14. The compensation awarded by the Tribunal is enhanced 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, deleted, enhanced or granted</i>
1	Loss of Income	Rs.11,70,000/-	Rs.17,55,000/-	Enhanced
2	Loss of Consortium to 1 st claimant	Rs. 40,000/-	Rs. 40,000/-	Confirmed
3	Loss of Consortium to 2 nd to 6 th claimants	-	Rs. 2,00,000/-	Granted
4	Loss of love and affection to 2 nd to 6 th claimants	Rs. 75,000/-	-	Deleted
5	Loss of estate	-	Rs. 15,000/-	Granted
6	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
7	Transport charges	Rs. 5,000/-	Rs. 5,000/-	Confirmed
Total		Rs.13,05,000/-	Rs.20,30,000/-	Enhanced by Rs. 7,25,000/-



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15. The second respondent Insurance Company is directed to deposit the aforesaid modified amount of Rs.20,30,000/- together with interest at 7.5% per annum from 12.09.2019 till the date of realization and cost of Rs.32,591.50, less the amount already deposited, if any, within a period of 6 weeks from the date of receipt of a copy of this order.

16. On such deposit, the appellants/claimants are permitted to withdraw the compensation, interest and costs, in the same proportion ordered by the Tribunal, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.

17. The appellants/claimants are directed to pay the court fee on the enhanced amount of compensation, if any, within a period of 4 weeks from the date of receipt of a copy of this order.

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

No costs.

09.08.2024

Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

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Copy To:

Additional District Judge,
Motor Accident Claims Tribunal,
Dindigul.



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SUNDER MOHAN, J.

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