



C.M.A.(MD) No.1181 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 24.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1181 of 2024

1.Renuga

W/o.Late.Mohan

2.Minor Pugazhini

D/o.Late.Mohan

rep. through her mother,
the first appellant

... Appellants

Vs.

Balakrishnan (died)

S/o.Govindhasamy

1.The Branch Manager,

New India Assurance Company Ltd.,

High Sports Building,

147, Salai Street,

Ramanathapuram.

2.Sasikala

W/o.Balakrishnan

3.Naresh

S/o.Balakrishnan

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to enhance the compensation to the tune of Rs.10,00,000/- in additional to the compensation awarded by the Tribunal



C.M.A.(MD) No.1181 of 2024

by modifying the Judgment and Decree made in M.C.O.P.No.10 of 2022 on the file of the Motor Accident Claims Tribunal/Principal District Court, Ramanathapuram dated 16.02.2024.

For Appellants : Mr.H.Thayumanaswamy

For R1 : Mr.J.S.Murali

For R2 & R3 : No appearance

J U D G M E N T

The instant appeal has been filed by the claimants seeking enhancement of compensation awarded by the Tribunal.

2. The appellants filed a claim petition stating that on 18.08.2020 at about 6:30 a.m., while the deceased was riding his two-wheeler bearing registration No.TN-63-BA-5835, another two-wheeler bearing registration No.TN-65-V-6025, which was insured with the first respondent, came from the opposite direction and collided with the two-wheeler ridden by the deceased, as a result of which the deceased sustained fatal injuries.

3. The owner of the offending two-wheeler died during the pendency of the claim petition, and therefore, his wife and son were



C.M.A.(MD) No.1181 of 2024

impleaded as the third and fourth respondents in the claim petition, who are the second and third respondents herein. They remained *ex parte* before the Tribunal.

4. The first respondent, Insurance Company, filed a counter before the Tribunal stating that the accident took place only due to the negligence of the deceased; that the rider of the two-wheeler insured with the first respondent did not have a valid driving licence; and that in any case, the compensation claimed was excessive.

5. Before the Tribunal, the appellants examined P.W.1 and P.W.2 and marked Exs.P1 to P15, and the first respondent examined R.W.1 and R.W.2 and marked Exs.R1 to R5.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the negligence of the two-wheeler insured with the first respondent. The Tribunal, however, held that since the rider of the offending two-wheeler did not have a valid licence, the first respondent is not liable to pay compensation and directed the second and third respondents, who are the



C.M.A.(MD) No.1181 of 2024

legal heirs of the deceased owner, to pay the compensation to the appellants.

7. The learned counsel for the appellants submitted that though the appellants had marked Exs.P10 and P15 to prove the avocation and income of the deceased, the Tribunal fixed a meagre notional income of Rs.10,000/- per month, and that Rs.30,000/- awarded by the Tribunal to the first appellant under the head 'loss of consortium' and Rs.10,000 awarded to the second appellant under the head 'loss of love and affection' are meagre; hence, he prayed for enhancement of the same.

8. The learned counsel for the appellants further submitted that even though there was a violation of policy condition since the rider of the insured two-wheeler did not have a valid driving licence, the Tribunal ought to have directed the first respondent, Insurance Company, to pay the compensation and recover it from the owner of the insured two-wheeler.

9. The learned counsel for the first respondent, Insurance Company, per contra, submitted that the award of the Tribunal fixing liability on the owner cannot be set aside, as the owner ought not to have allowed his son,



C.M.A.(MD) No.1181 of 2024

the third respondent herein, to ride the insured two-wheeler without a valid driving licence.

10. Though notice has been served on the second and third respondents, the legal heirs of the deceased owner, and their names are printed in the cause list, none has entered appearance.

11. The points for consideration in the instant appeal are: (a) whether the quantum of compensation awarded by the Tribunal is just and reasonable; and (b) whether the first respondent, Insurance Company, can be directed to pay the compensation at the first instance and recover it from the second and third respondents, the legal heirs of the deceased owner.

12. As regards the first point, it is seen that the appellants had examined P.W.1, the wife of the deceased, who deposed that the deceased was working as an attendant in the Ex-Servicemen Contributory Health Scheme (ECHS) Polyclinic, Ramanthapuram, and produced Ex.P15, the Salary Certificate, and Ex.P10, the Income Tax Return for the year 2020-2021. Both the documents are Xerox copies. However, it is seen



C.M.A.(MD) No.1181 of 2024

that the employer was not examined to prove the Salary Certificate (Ex.P15). In such circumstances, this Court is of the view that the Tribunal was right in rejecting those documents and fixing the notional income. However, the notional income fixed by the Tribunal at Rs. 10,000/- per month is meagre. Considering the age and avocation of the deceased and the year of the accident, this Court is of the view that it would be just and reasonable to fix Rs.12,000/- as monthly notional income of the deceased.

13. Since the deceased was 40 years old at the time of the accident, 40% has to be added towards the future prospects. Since there are two dependents, 1/3 has to be deducted towards personal expenses. The multiplier applicable is 15. Thus, the compensation under the head 'loss of income' would be Rs.20,16,000/- [Rs.12,000/- + Rs.4,800/- (40%) x 12 x 15 x 2/3]. The compensation awarded by the Tribunal to the first appellant/first claimant under the head 'loss of consortium' is enhanced to Rs.40,000/-, and the compensation awarded to the second appellant/second claimant under the head 'loss of love and affection' is enhanced to Rs.40,000/-. The compensation awarded by the Tribunal under the heads 'transport charges' and 'funeral expenses' is enhanced to



C.M.A.(MD) No.1181 of 2024

Rs.15,000/- each. Thus, the total compensation payable to the appellants

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 reduced</i>
1	Loss of Income	Rs.16,80,120/-	Rs.20,16,000/-	Enhanced
2	Loss of Consortium to the first appellant	Rs. 30,000/-	Rs. 40,000/-	Enhanced
3	Loss of Love and Affection to the second appellant	Rs. 10,000/-	Rs. 40,000/-	Enhanced
4	Transport Charges	Rs. 10,000/-	Rs. 15,000/-	Enhanced
5	Funeral Expenses	Rs. 10,000/-	Rs. 15,000/-	Enhanced
Total		Rs.17,40,120/-	Rs.21,26,000/-	Enhanced by Rs.3,85,880/-

Point No.1 is answered accordingly.

14. As regards the second point, it is seen that though the appellants had not specifically challenged the finding of the Tribunal directing the second and third respondents to pay the compensation, this Court is of the view that in the exercise of power under Order 41, Rule 33 of the Code of Civil Procedure, this Court can set aside the finding of the Tribunal with regard to the payment of compensation by the second and third respondents, the legal heirs of the deceased owner. However, the first respondent had established before the Tribunal that the rider of the



C.M.A.(MD) No.1181 of 2024

insured two-wheeler did not have a valid driving licence. It is contended by the learned counsel for the first respondent that the first respondent cannot be directed to pay and recover the compensation since the rider is the son of the insured who was the tortfeasor. This Court is of the view that it would not make any difference and it is like any other violation of policy condition. Since the appellants are third parties and the act being the beneficial legislation, the insurer has an obligation to first satisfy the award and recover it from the owner. Therefore, this Court is of the view that the first respondent can be directed to pay the compensation determined by this Court with liberty to recover it from the second and third respondents herein 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. Point No.2 is answered accordingly.

15. The first respondent, Insurance Company, is directed to deposit the enhanced compensation of Rs.21,26,000/- together with interest at 7.5% per annum from the date of the claim petition till the date of realization and costs ordered by the Tribunal, within a period of six weeks from the date of receipt of a copy of this Judgment.



C.M.A.(MD) No.1181 of 2024

16. On such a deposit, the appellants/claimants are entitled to the same equally.

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

18. Since the second appellant is the minor, her share is directed to be deposited in an interest-bearing fixed deposit [F.D.] in any nationalized bank until she attains majority. The first appellant, the mother of the second appellant, is permitted to withdraw the interest once every six months, for the benefit of the minor child.

19. The first respondent, Insurance Company, is at liberty to recover the aforesaid compensation to be deposited by it from the second and third respondents herein as per the guidelines issued by the Hon'ble Supreme Court in **Nanjappa's** case referred to *supra*.

20. The appellants shall pay the necessary court fee for the enhanced amount of compensation, if any.



C.M.A.(MD) No.1181 of 2024

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

No costs.

24.10.2024

Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

JEN

Copy To:

- 1.The Principal Sub Judge,
Motor Accident Claims Tribunal,
Nagercoil,
Kanyakumari District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD) No.1181 of 2024

SUNDER MOHAN, J.

JEN

C.M.A.(MD) No.1181 of 2024

24.10.2024