



C.M.A.(MD) No.662 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

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Kannaki (Died)

1.Karthick
S/o.Late.Arumugam

2.Jegan
S/o.Late.Arumugam

Valliammai (Died)

... Appellants

Vs.

1.N.Venkadathri

2.The Branch Manager,
National Insurance Company Ltd.,
KRT Building,
No.33, Promenade Road,
Cantonment, Trichy.

3.R.Senthilkumar

4.The Branch Manager,
United India Insurance Company Ltd.,
Promenade Road,
Cantonment, Trichy.

... Respondents



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Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order dated 29.03.2022 passed in M.C.O.P.No.4879 of 2013 on the file of the Motor Accident Claims Tribunal/Special District Judge, Tiruchirappalli and allow the present Civil Miscellaneous Appeal by enhancing the quantum of compensation.

For Appellants : Mr.P.Vinoth

For R2 : Mr.V.Sakthivel

For R3 : Mr.R.Ponkarthikeyan

For R4 : Mr.N.Dilip Kumar

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 Court], Tiruchirappalli, *vide* its Judgment and Decree dated 29.03.2022 passed in M.C.O.P.No.4879 of 2013.

2. The appellants filed a claim petition before the Tribunal, stating that while the deceased on 2/5/2007 was walking on the side of the main road, a van bearing Registration No.TN-48-C-3741 insured with the second respondent, Insurance Company, came in a rash and negligent manner and dashed against a two-wheeler bearing Registration No.TN-45-



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F-4074 insured with the fourth respondent, Insurance Company, as a result of which the rider of the two-wheeler lost his control and dashed against the deceased, causing the fatal injuries.

3. The first and third respondents remained *ex parte* before the Tribunal.

4. The second respondent, Insurance Company, filed a counter stating that the accident took place only due to the rash and negligent riding of the rider of the two-wheeler insured with the fourth respondent and that in any case, the compensation claimed by the claimants was excessive.

5. The fourth respondent, Insurance Company, also filed a counter denying the averments, stating that the accident took place only due to the negligence of the van driver and that in any case, the compensation claimed by the claimants was excessive.

6. The claimants examined two witnesses as P.W.1 and P.W.2 and marked Exs.P1 to P6. The respondents examined one witness as R.W.1.



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WEB COPY 7. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the negligence of both the van driver and the rider of the two-wheeler, fixed 75% contributory negligence on the van driver and 25% contributory negligence on the rider of the two-wheeler, and directed the first and second respondents, the owner and the insurer of the van, to pay 75% of the compensation of Rs.5,35,750/- and the third and fourth respondents, the owner and the insurer of the two-wheeler, to pay the remaining 25%.

8. The learned counsel for the appellants/claimants submitted that the compensation awarded by the Tribunal is meagre inasmuch as the notional income of Rs.4,500/- per month fixed by the Tribunal is very low and that the Tribunal has awarded a meagre compensation under the other conventional heads and prayed for enhancement of the same.

9. The learned counsels for the second and fourth respondents, per contra, submitted that the quantum of compensation awarded by the Tribunal is just and reasonable, and therefore, no interference is called for.



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10. Heard the learned counsel for the third respondent. Notice to the first respondent was dispensed with by an earlier order of this Court dated 27.07.2024.

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

12. The appellants had stated that the deceased was working as a Gem Cutting and Polished Synthetic and Precious Stones Agent and earning a sum of Rs.7,500/- per month. P.W.1, the wife of the deceased (since deceased), had deposed before the Tribunal about the avocation of the deceased. However, the appellants had not produced any documentary proof either to establish the avocation or the income of the deceased. However, considering the nature of the avocation, the age of the deceased, and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.6,000/- per month.

13. The deceased was 47 years old at the time of the accident. Hence, 25% has to be added towards future prospects. Multiplier applicable is 13. Since there were three dependents, namely, the wife and



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two children, though it is claimed that the fourth claimant (since deceased) was also a dependent, this Court is of the view that 1/3rd of income can be deducted towards personal expenses, in the facts and circumstances of the case. Thus, the compensation under the head 'loss of income' is modified as follows:

Loss of Income: [Age of the deceased - 47 years]

Notional Monthly Income - Rs.6,000/-

Annual Income

[Rs.6,000 x 12] : Rs.72,000/-

Add: Future Prospects

[Rs.72,000/- x 25/100] : Rs.18,000/-

: Rs.90,000/-

Less : Personal Expenses at 1/3rd

[90,000 x 1/3] : Rs.30,000/-

: Rs.60,000/-

Applicable Multiplier – 13

[Rs.60,000/- x 13] - Rs.7,80,000/-

14. It is seen that the first and fourth claimants passed away during the pendency of the claim petition. Therefore, the Tribunal has awarded the compensation under the head 'loss of consortium' only to the appellants/second and third claimants. Since the compensation is payable



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on the date of the claim petition, this Court is of the view that the Tribunal ought to have awarded the compensation under the head 'loss of consortium' to the first and fourth claimants as well. The Tribunal has awarded only a sum of Rs.35,000/- each to the appellants/second and third claimants, which is enhanced to Rs.40,000/-. Therefore, all the claimants are entitled to Rs.40,000/- each under the head 'loss of consortium'.

15. The award under the other heads is just and reasonable and is therefore confirmed. Accordingly, the total compensation payable to the claimants 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 Income	Rs.4,38,750/-	Rs.7,80,000/-	Enhanced
2	Transport Charges	Rs. 7,000/-	Rs. 7,000/-	Confirmed
3	Loss of Estate	Rs. 10,000/-	Rs. 10,000/-	Confirmed
4	Loss of consortium	Rs. 70,000/-	Rs.1,60,000/-	Enhanced
5	Funeral Expenses	Rs. 10,000/-	Rs. 10,000/-	Confirmed
Total		Rs.5,35,750/-	Rs.9,67,000/-	Enhanced by Rs.4,31,250/-

16. The second respondent, being the insurer of the van, shall deposit 75% of the above enhanced amount of Rs.9,67,000/- together with



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interest at 7.5% per annum from the date of the claim petition, i.e., 11.12.2007, till 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 Judgement.

17. The fourth respondent, being the insurer of the two-wheeler, shall deposit the remaining 25% of the above enhanced amount of Rs.9,67,000/- together with interest at 7.5% per annum from the date of the claim petition, i.e., 11.12.2007, till 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 Judgement.

18. On such a deposit, the appellants/second and third claimants are permitted to withdraw the same equally as the first and fourth claimants passed away, along with proportionate interest and costs, less the amount already withdrawn, if any, by filing a suitable application before the Tribunal.

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



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

No costs.

27.08.2024

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



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SUNDER MOHAN, J.

JEN

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