



C.M.A.(MD) No.653 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED :25.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.653 of 2024

1.Velsamy

2.Vijayalakshmi

3.Sindu

4.Karpagalakshmi

... Appellants

Vs.

1.Paramasivan

2.United India Insurance Company Limited,
Through its Branch Manager,
No.443, Periyakulam Road,
Theni-625 531.

... Respondents

Prayer: Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount in M.C.O.P.No.1302 of 2019 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Tirunelveli, dated 10.08.2022.

For Appellants : Mr.T.Selvakumaran

For R-1 : Mr.S.Prabha

For R-2 : Mr.T.Robert Chandra Kumar

J U D G M E N T



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WEB COPY The claimants have preferred the appeal challenging the finding on liability by the Tribunal and seeking enhancement of compensation.

2. In view of the grounds raised by the appellant, the facts leading to the filing of the claim petition may not be necessary for the disposal of this appeal.

3. Learned counsel appearing for the appellants would submit that the Tribunal had found that the driver of the insured vehicle did not have the valid license; that however, the Tribunal directed the owner of the insured vehicle to pay the compensation instead of directing the Insurance Company, viz., the second respondent herein to pay the compensation and recover it from the owner; and that the compensation awarded by the Tribunal is meagre and prayed for enhancement also.

4. Learned counsel appearing for the first respondent would submit that the award of the Tribunal may be modified by directing the Insurance Company to pay and recover the amount from the owner of the vehicle / first respondent.



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WEB COPY 5. Learned counsel appearing for the second respondent would submit that the award of the Tribunal is just and reasonable and no interference is called for.

6. The points for consideration in this appeal are as follows:

“1. Whether the finding on liability by the Tribunal is justified?

2. Whether the quantum of compensation awarded by the Tribunal is just and reasonable?”

7. As regards the first point is concerned, the tribunal held that the Driver of the offending vehicle did not have any licence. Since the first respondent has not produced any valid licence, the Tribunal was right in concluding that the Driver of the Insured vehicle did not have any valid license. However, the Tribunal had erroneously directed the first respondent to pay the compensation by exonerating the second respondent.



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8. It is well settled law that when there is any violation of the Policy condition, the Insurance Company can be directed to pay the compensation at the first instance and recover such compensation from the owner. Therefore, this Court is of the view that the award of the Tribunal directing the first respondent to pay the compensation amount can be modified by directing the second respondent to pay the claimants and recover it from the first respondent / owner of the vehicle.

9. As regards the second question, this Court finds that the deceased was doing milk vending business, however, no proof of income was produced by the appellants. The Tribunal, after fixing the notional income at Rs.9,000/- per month, had awarded a sum of Rs.29,76,146/- (Rupees Twenty Nine Lakhs Seventy Six Thousand One Hundred and Forty Six only) as total compensation to the claimants. This Court finds no infirmity in the order passed by the Tribunal. However, the Tribunal had awarded a sum of Rs.40,000/- under the head of loss of love and affection for all the four claimants together. Thus, the same is enhanced to Rs.40,000/- to each of the claimants. The award under the other heads are confirmed. Thus, the compensation is modified as follows:



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Sl. No	Description	Amount awarded by the Tribunal	Amount awarded by this Court	Award confirmed, enhanced or granted
1	Loss of Income	Rs. 17,01,000/-	Rs. 17,01,000/-	Confirmed
2	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
3	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4	Loss of Love and Affection for claimants 1 to 4	Rs. 40,000/-	Rs. 1,60,000/-	Enhanced
5	Transport Expenses	Rs. 10,000/-	Rs. 10,000/-	Confirmed
6	Medical Bills	Rs. 11,95,146/-	Rs. 11,95,146/-	Confirmed
Total		Rs.29,76,146/-	Rs.30,96,146/-	Enhanced by Rs. 1,20,000/-

10. The second respondent is directed to deposit the compensation amount of Rs.30,96,146/- (Rupees Thirty Lakhs Ninety Six Thousand One Hundred and Forty Six only) as determined by this Court before the Tribunal in M.C.O.P.No.1302 of 2019 with accrued interest at 7.5% p.a., from the date of the claim petition till the date of realization and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this order.

11. The second respondent is directed to deposit the compensation amount as determined by this Court. The second respondent is at liberty to recover the compensation from the first respondent in accordance with



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the guidelines issued by the Hon'ble Supreme Court in the case of ***Nanjappa vs. State of Karnataka*** reported in ***2015 (1) SCC 550***.

12. On such deposit, the appellants/claimants are entitled to withdraw their award amount as per the apportionment fixed by the Tribunal with proportionate interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal. The appellants/claimants are directed to pay the necessary Court Fee, if any, on the enhanced amount.

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

No costs.

25.10.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
TSG

To:

1.The Motor Accident Claims Tribunal
/ Principal District Judge, Tirunelveli.



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2.The Branch Manager,
United India Insurance Company Limited,
No.443, Periyakulam Road,
Theni-625 531.

3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

SUNDER MOHAN, J.

TSG



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