IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 01-07-2025**

CORAM

**THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI**

CMA No. 741 of 2024
AND
CMP NO. 19555 OF 2024

1. S.Saraswathy
2. S. Kowshik
3. S. Nigariha

Appellant(s)

Vs

1. K. Deepa

2.The National Insurance Co.Ltd.,
Motor Third Party Claim Hub, No.46,
Moore St, Chennai 1.

3.M. Panchalai

4.Shriram Genl.Ins.Co.Ltd., (Car)
Flat No.5, 1 st Floor,
Ramachandran Street,
Saravanan Nagar,
Sevaram,
Perungudi,
Chennai -96.

Respondent(s)

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 12.06.2023 passed in MCOP No.7089 of 2017 on the file of the learned III Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Appellant(s): S.Suriya Prakash

For Respondent(s): M/s J.Michael Visuvasam for R2
M/s R.Sree Vidhya for R4
R-3 - No Appearance
R1 - Unclaimed

**ORDER**

The above Civil Miscellaneous Appeal arises against the Award and Decree dated 12.06.2023 passed in MCOP.No.7089 of 2017 on the file of the learned III Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

2.It is the case of the claimants that they are the wife, son, and daughter of the deceased N. Selvam, who sustained fatal injuries in a motor vehicle accident on 10.04.2017, when a car bearing Reg.No.TN-10-AF-9066 in which he was traveling collided with a stationary bus bearing No.TN-21-AJ-8785, parked without any indication lights. Hence, the claimants filed a claim petition seeking compensation of Rs.50,00,000/- under Section 166 of the Motor Vehicles Act. The Respondents, who are the owners of the bus and car and their insurers, contended that the accident was caused solely due to the negligence of the driver of the car. They contended that the claimed income and medical expenses are exaggerated. After analysing the oral and documentary evidence made on either side, the Tribunal awarded Rs.14,08,400/- as compensation to the claimants and apportioned that 60% liability on bus insurer/2$^{nd}$ respondent and 40% liability on the insurer of the car/4$^{th}$ respondent.

3.The learned counsel for the claimants contended that the Tribunal failed to take note of the income tax submitted by the claimants and as per the statement, the Tribunal ought to have fixed 40,000/- per month, since the deceased was also an LIC Agent. But, the Tribunal fixed Rs.30,000/- per month. Hence, they sought for enhancement of compensation. Further, the learned counsel contended that the monthly income of the deceased should be enhanced. The Tribunal did not consider the medical expenses incurred during hospitalization for treatment of injuries. Further, he contended that the treatment period was four days, major operation covered under LTC policy. Hence, medical expenses deserve consideration.

4.The learned counsel for the respondents 2 and 4 contended that the deceased filed his Return for the assessment year 2017-2018 alone under Ex.P.8, since the accident occurred in 2017. Hence, the Tribunal has rightly considered the said Income Tax and the notional income was fixed, as such, is valid, which needs no interference.

5.At the time of arguments, the learned counsel attempted to produce additional documents before this Court that for the assessment year 2015-2016 also, the income comes around Rs.5,11,000/- which is prior to the accident. Therefore, he prayed to consider the said Return and seeks for modification of compensation. Admittedly, before the Tribunal, these documents have not been filed by the claimants, as rightly pointed out by the learned counsel for the respondents 2 and 4. Furthermore, the learned counsel for the respondents 2 and 4 submitted that the deceased was an LIC Agent and get commission from the Corporation during his lifetime and also continuing even after his death. Therefore, there is no loss of income to the family. The learned counsel for the claimants replied that after the death of the deceased, the legal heirs of the deceased are not entitled to claim the commission amount. To that effect, there is no provision on the side of the claim.

6.On a perusal of the records, it reveals that the deceased was an LIC Agent and even assuming that he received Rs.20,000/- per month as an LIC Agent. Hence, this Court fixes Rs.20,000/- per month as notional income of the deceased. Further, no interference is required in proportionate liability. Taking into account the cost of living at that time, the notional income can be enhanced to a sum of Rs.20,000/- per month to which 10% of actual salary has to be added to the monthly income of the deceased towards future prospects. Therefore, the monthly income would come to Rs.22,000/-. The annual income would work out to a sum of Rs.2,64,000/- (Rs.22,000/-x 12 = Rs.2,64,000/-). After deducting 1/3$^{rd}$ amount towards his personal expenses, the annual contribution to the family would be a sum of Rs.1,76,000/-. Considering his age, the appropriate multiplier to be adopted is 11. Therefore, the loss of dependency to the family would be a sum of Rs.19,36,000/- (Rs.1,76,000/-x 11 = Rs.19,36,000/-). Though the medical bills have not been submitted before the Tribunal, considering hospitalization and major operation for four days, this Court grants Rs.40,000/- under medical expenses. In all other respects, the Award remains unaltered. The enhanced compensation would be a sum of -Rs.21,26,000/-. Therefore, taking into consideration the above aspects, the modified amount is as follows:

| **Head of Compensation** | **Amount (Rs.)** |
|---|---|
| Loss of Dependency | -19,36,000 |
| Loss of Consortium | -1,20,000 |
| Loss of Estate | -15,000 |
| Funeral Expenses | -15,000 |
| Medical Expenses | -40,000 |
| **Total Compensation** | -Rs.21,26,000/- |
| **Liability Apportionment:** | |
| Bus Owner & Insurer (60%) | Rs.12,75,600/- |
| Car Owner & Insurer (40%) | Rs.8,50,400/- |

7.Accordingly, this Civil Miscellaneous Appeal is partly allowed. The respondents 2 and 4 are directed to deposit the entire compensation amount of

-Rs.21,26,000/- with interest @7.5% per annum, less the amount already deposited, with proportionate accrued interest and costs, as per the Liability Apportionment, to the credit of M.C.O.P.No.7089 of 2017 on the file of the learned III Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment, if not deposited earlier. The claimants are not entitled to get interest for the default period. On such deposit, the claimants are permitted to withdraw the entire award amount with proportionate accrued interest and costs as apportioned by the Tribunal, by making necessary applications.

The claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimants. No costs.

**01-07-2025**

mps
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

To

1.The III Judge,
Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai.

2.The Section Officer,
VR Section,
Madras High Court.

**T.V.THAMILSELVI J.**

mps

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