IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :21.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.193 of 2021

1.B.Sivagami
2.B.Chidambaram
3.B.Mahalakshmi ... Appellants

Vs.

1.M/s.Sakthi Roadways
Rep. By Prop. S.Sakthivel,
5/14, MRGA Nilayam, 1st Floor,
NGR Layout, 5th Cross,
Rupena Agrahara, Bangalore-560068,
Karnataka

2.United India Insurance Company Ltd.
TP-HUB, Ranga Building,
104, Peramanur Main Road,
Near Mithila Lodge,
Salem-636007 ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to enhance the compensation amount made in Judgment and decree dated13.12.2019 made in MCOP No.51/2019 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Salem.

For Appellant : Mr.S.P.Yuaraj
For Respondent :M/s.R.Rathna Thara for R2
R1- Notice dispensed with

JUDGMENT

Aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, the claimants have come before this court by way of this appeal.

2. It is the case of the claimants that son of the first claimant and brother of the claimants 2 and 3 died in a road accident that had taken place on 28-06-2017. It was the case of the claimants before the Tribunal that the deceased Nataraj was riding his Hero Passion Pro motorcycle from North to South direction by observing the traffic rules. When he came near KP.Karadu Privu, one Ashok Leyland Mini lorry belonged to the first respondent, insured with the second respondent, came in a rash and negligent manner and dashed against the two-wheeler from backside. Therefore, the deceased fell down and the front right wheel of the mini lorry ran over the head of the deceased. Therefore, the claim petition was filed seeking compensation of Rs.24,00,000/-

3. The first respondent remained *ex-parte* before the Tribunal and the second respondent/ insurance company filed a counter and contested the claim on the ground that the accident had occurred only due to the fault on the part of the deceased.

4. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the mini-lorry, insured with the second respondent. The compensation payable to the claimants was quantified at Rs.9,83,920/- after deducting 15% towards contributory negligence for failure to wear the helmet. Aggrieved by the quantum of compensation, the claimants have come before this court by way of this appeal.

5. Both the learned counsel for the Appellants as well as the Second Respondent/ Insurance Company have not advanced any arguments on the questions of negligence as well as liability. Hence, the facts necessary to decide those questions are not discussed in this appeal.

6. The learned counsel for the Appellants submitted that the accident had occurred in the year 2017 and the notional income fixed by the Tribunal at Rs.8000/- is very much on the lower side. Hence, it requires enhancement.

7. The learned counsel for the Second Respondent/ Insurance Company submitted that as per the salary certificate produced by the claimants, the net salary of the deceased could be fixed only at Rs. 8000/- Therefore, the Tribunal was justified in fixing Rs.8000/- as notional income.

8. In the claim petition, it was averred by the claimants that the deceased was working as Body Shop Technician in Ford Motors Car Company, Salem. In order to prove the income, the claimants produced Exhibit P8 and Exhibit P20, salary certificates issued by the Susee Premium Automobiles Private Limited, Madurai. However, the salary certificates were rejected by the Tribunal on the ground that the salary certificates were prepared in the company letter pad, therefore, it should not be relied on. After rejecting the salary certificates, the Tribunal proceeded to fix the notional income at Rs. 8000/- per month.

9. A perusal of the Exhibit P8 would indicate that it is a computer generated salary slip issued by M/s.Susee Premium Automobiles Private Limited, Madurai. Exhibit P20 is the salary certificate issued by the very same company later in the letter pad. In Ex.P8, the salary of the deceased was mentioned at Rs.10,364/-. In Ex.P20, the salary certificate prepared in letter pad, the salary of the deceased was mentioned at Rs.10,392/- for the month of June 2017.

10. In Exhibit P8, the claimant produced the salary slip for the month of May 2017, which indicates that the salary was Rs.10,337/-. The salary slip for the month of April 2017 would indicate that salary was Rs. 8,794/-. Since Ex.P8 is a computer generated salary slip with the seal of the company, this court is inclined to consider the same. A closed perusal of the salary slip produced by the claimant for the month of June 2017 indicates that his gross salary was Rs.10,364/- which includes the travelling allowance of Rs.1637/-. The travel allowance is personal to the employee. Therefore, the same shall be deducted from the salary. Likewise, a sum of Rs. 1679/- was paid to the deceased as wash allowance. The same cannot be taken into consideration as travel allowance and wash allowance are

relating to the employment of the deceased. If these two allowances are deducted from the gross salary, the net salary of the claimant would be Rs.7048/-.A perusal of the payslip for the month of May 2017 would indicates that the gross salary is mentioned as Rs.10,337/- If the amount mentioned under travel allowance, wash allowance are deducted from the gross salary, the net salary would be only Rs.7021/-

11. The tribunal fixed the notional income at Rs. 8000/-. Taking into consideration Exhibit P8, the computer generated salary slips produced by the claimant, this Court feels that the amount of Rs.8000/- fixed by the tribunal is slightly on higher side. However, this court is not inclined to disturb the same. In Exhibit P-2, post-mortem report, the age of the deceased was mentioned as 32 years. Therefore, he is entitled to 40% enhancement towards future prospects. The applicable multiplier is 16. Since the deceased died as a bachelor, 50% of the amount has to be deducted towards the personal expenses. Therefore, the loss of dependency is fixed at Rs.10,75,200/-

Rs. 8,000 x 1.4 x 12 x 16 x 50/100 = Rs.10,75,200/-

12. In addition to the above said amount, the first claimant/mother of

the deceased is entitled to Rs.40,000/- towards loss of parental consortium. The claimants 2 and 3 are entitled to Rs.40,000/- each towards loss of love and affection. The claimants are entitled to Rs.15,000/- each towards funeral expenses and the loss of estate. The amount of Rs.10,000/- awarded by the tribunal under the head transportation charges is set aside. Therefore, in all, the amount payable to the claimants is Rs. 12,25,200/-

13. A perusal of Exhibit P2 would indicate that the claimant suffered head injury and Sub Arachnoid Hemorrhage is noted. Therefore, the tribunal was justified in fixing 15% contributory negligence for his failure to wear helmet and the same is confirmed. After deduction of 15% contributory negligence, the claimants are entitled to Rs.10,41,420/- Since the driver of the lorry failed to produce a valid driving license to drive the heavy vehicle, the tribunal fixed the liability on 1st respondent and directed the 2nd respondent to pay and recover from the 1st respondent and the said finding is confirmed.

14. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:-

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	10,75,200/- After deduction of 15 % contributory negligence fixed at Rs.9,13,920/-	10,75,200 /-	Affirmed
2.	Loss of estate	10,000/-	15,000/-	Enhanced
3.	Funeral expenses	10,000/-	15,000/-	Enhanced
3.	Loss of Parental Consortium (1st claimant)	20,000/-	40,000/-	Enhanced
5.	Loss of Love and Affection (claimants 2 & 3)	20,000/-	80,000/- (40,000x2)-	Enhanced
6.	Transportation Expenses	10,000/-	Nil	Set aside
	Total	**9,83,920/-**	**12,25,200 /-**	**Enhanced by Rs.2,41,280 /-**
	Less:15% contributory negligence	**Tribunal deducted it from loss of dependency alone**	**1,83,780/-**	
	Net compensation	**9,83,920/-**	**10,41,420 /-**	**Enhanced by 57,500/-**

15. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,83,920/- is hereby enhanced to Rs.10,41,420/-. The appellants/claimants are entitled to interest at the rate of 7.5% per annum (excluding the delay period, if any) from the date of filing of the claim petition till the date of realization. The 2nd respondent /Insurance Company is directed to deposit the enhanced award amount, to the credit of MCOP No.51/2019 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Salem, along with interests and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the claimants are permitted to withdraw the same along with interest and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal. No costs.

21.03.2025

Index:Yes/No
Internet:Yes/No
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To

1. Motor Accident Claims Tribunal,
 Principal District Judge, Salem.

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

S.SOUNTHAR, J.

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