IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.639 of 2025

1.P.Gayathri

2.Minor P.Priya Dharshini

P.Vijaya

Ponnurangam

3.P.Balaji ... Appellants

vs.

1.C.Kubendiran

2.The United India Insurance Company Limited,
Motor Third Party Claim Cell,
No.48, 1st Floor, Chandra Plaza Complex,
Arcot Road, Saligramam,
Chennai-600 093. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal and to enhance the amount awarded in M.C.O.P.No.29 of 2020 dated 26.07.2024 on the file of Motor Accident Claims Tribunal, (III Additional District and Sessions Court), Tiruvallur at Poonamallee.

For Appellants : Mr.K.Varadha Kamaraj

For R2 : Mr.T.K.Premkumar

For R1 : Notice Dispensed With

JUDGMENT

Not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal (III Additional District and Sessions Court), Tiruvallur at Poonamallee in M.C.O.P.No.29 of 2020, dated 26.07.2024, the claimants have come by way of this appeal.

2. It is not in dispute that the husband of the 1st claimant, father of the 2nd claimant and son of the deceased claimants 3 and 4 and brother of 5th claimant namely P.Parthiban died in a road accident that had occurred on 22.12.2019. According to the claimants, deceased P.Parthiban was driving his motorcycle in east-west direction by following traffic rules. At that point of time, a bus bearing Registration No.KA-19-AB-1909 belonged to the 1st respondent insured with the 2nd respondent came in the opposite direction in a rash and negligent manner and dashed against the motorcycle. As a result

of the accident, the deceased died on the spot. Hence, a claim petition was filed seeking compensation of Rs.70,00,000/-.

3. The 1st respondent/owner of the bus remained *exparte* before the Tribunal and the claim petition was resisted by the 2nd respondent-Insurance Company on the ground that accident had occurred due to the negligence on the part of the deceased.

4. Before the Tribunal, 1st appellant/1st claimant was examined as PW.1, an eyewitness was examined as PW.2 and employer of the deceased was examined as PW.3. On behalf of the appellants/claimants, 19 documents were marked as Exs.P1 to P19. On behalf of the 2nd respondent/Insurance Company, no witnesses were examined and no document was marked.

5. The Tribunal based on the evidence available on record came to the conclusion that accident had occurred only due to the rash and negligent driving of the driver of the bus. The compensation payable to the claimants was quantified as Rs.22,92,400/-. Not satisfied with the quantum of

compensation fixed by the Tribunal, the claimants have come before this Court by way of this appeal.

6. Both the learned counsel appearing for the appellants/claimants as well as learned counsel appearing for the 2nd respondent-Insurance Company have not advanced any arguments on the questions of negligence and liability. Therefore, facts necessary to decide those questions are not discussed in this judgment.

7. The learned counsel appearing for the appellants/claimants would submit that deceased was employed as a Security at the relevant point of time and he was earning Rs.27,275/- per month. However, the Tribunal has fixed very low notional income for the deceased and the same requires enhancement.

8. The learned counsel appearing for the 2nd respondent/Insurance Company would submit that 1st claimant during the course of her cross examination deposed that the monthly income of deceased was Rs.13,108/-. However, the claimants have not produced any document to substantiate the

same. Therefore, the Tribunal was justified in fixing the notional income at Rs.12,000/- per month.

9. In the claim petition, it was averred by the claimants that the deceased was employed in Security Services and was earning a sum of Rs.27,275/- per month. However, they have not produced any documentary evidence before the Tribunal. Though wife of the deceased, who was examined as PW.1 in her chief examination deposed in line with averment contained in the claim petition, during the course of her cross examination had stated that monthly income of the deceased was Rs.13,108/- per month.

10. A truncated statement made in the cross examination cannot be put against the witness, when there is an assertion that deceased was earning more in her chief examination. In the absence of any credible evidence, either oral or documentary to prove the income of the deceased, this Court can very well fix the notional income. Taking into consideration the date of accident and cost of living, this Court feels it would be appropriate to fix a sum of Rs.16,500/- as notional income for the deceased. As per the Aadhaar Card of the deceased marked as Ex.P8, the Tribunal fixed the age of the

deceased at 35 years. Therefore, the claimants are entitled to 40% enhancement towards future prospects. The applicable multiplier is 16. At the time of filing of Original Petition, the parents of the deceased were alive, they were arrayed as Claimants 3 and 4. Therefore, at the time of filing of Original Petition, there were four dependents, even if 5th claimant-brother of the deceased was excluded. Therefore, 1/4th amount shall be deducted towards personal expenses. In that case, the loss of dependency would be Rs.33,26,400/- (Rs.16,500 x 1.4 x 12 x 16 x 3/4).

11. The accident had occurred within three years from the date of pronouncement of judgment in ***National Insurance Company Limited vs. Pranay Sethi and others*** dated 31.10.2017. Therefore, the amount of Rs.18,000/- each awarded under the heads loss of estate and funeral expenses shall be reduced to Rs.15,000/- each. The Tribunal awarded a lump sum of Rs.96,000/- under the head loss of consortium and the same is not correct. The 1st claimant is entitled to Rs.40,000/- towards loss of consortium and the 2nd claimant is entitled to Rs.40,000/- towards love and affection. The amount of Rs.10,000/- awarded by the Tribunal under the head transportation expenses is covered by loss of estate. Therefore, the

amount of Rs.10,000/- awarded under the head transportation expenses is set aside. In all the claimants are entitled to Rs.34,36,400/-. Accordingly, the award passed by the Tribunal is modified as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court	Remarks
1.	Loss of Dependency	Rs.21,50,400/-	Rs.33,26,400/-	**Enhanced**
2.	Loss of Estate	Rs.18,000/-	Rs.15,000/-	**Reduced**
3.	Funeral Expenses	Rs.18,000/-	Rs.15,000/-	**Reduced**
4.	Loss of Consortium	Rs.96,000/-	Rs.80,000/-	**Reduced**
5.	Transportation Expenses	Rs.10,000/-	-	**Set Aside**
		Rs.22,92,400/-	Rs.34,36,400/-	**Enhanced by Rs.11,44,000/-**

12. In view of the discussions made earlier, the compensation awarded by the Tribunal is enhanced to Rs.34,36,400/- from Rs.22,92,400/-. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.34,36,400/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.29 of 2020 on the file of the Motor Accident Claims Tribunal

(III Additional District and Sessions Court), Tiruvallur at Poonamallee, within a period of six weeks from the date of receipt of copy of this judgment.

13. The 1st appellant/1st claimant namely the wife of the deceased shall be permitted to withdraw her share (fixed as Rs.20,36,400/-) from the total compensation amount along with interest and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal. Since 3rd appellant/5th claimant is brother of deceased aged 36 years and his dependency is not proved, no amount is apportioned in his favour.

14. The share of the minor 2nd claimant is fixed at Rs.14,00,000/- and the said amount shall be invested in anyone of the Nationalized Banks under a Fixed Deposit Scheme **for a period of three years** which shall be renewed periodically until she attains majority and the 1st appellant/1st claimant, being the Natural Guardian of the minor 2nd claimant, is permitted to withdraw the interest accrued thereon in the said Fixed Deposit Account **once in three months** and the same shall be used for the welfare of the minor 2nd claimant.

15. With the above direction, the Civil Miscellaneous Appeal is Allowed. The appellants/claimants are directed to pay applicable additional court fee. No costs.

12.03.2025

Index :Yes / No
Speaking order :Yes / No
Neutral Citation :Yes / No
dm

To

1.The Motor Accident Claims Tribunal,
(III Additional District and Sessions Court),
Tiruvallur at Poonamallee.

2.The United India Insurance Company Limited,
Motor Third Party Claim Cell,
No.48, 1st Floor, Chandra Plaza Complex,
Arcot Road, Saligramam,
Chennai-600 093.

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

S.SOUNTHAR, J.

dm

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