IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.975 of 2025

1.Sabrama Shahin

2.Minor.Sheik Addas

(Rep by his next friend, guardian, mother Sabrama Shahin)

3.Absari ... Appellants

vs.

1.Sureshkumar

2.IFFCO TOKIO General Insurance Co. Ltd.,
Policy issuing office No.28, north usman road,
T. Nagar, Chennai – 17.
(Rep by its Salem office LIC colony opp. To
New Bus stand, Omalur main road, Salem 4). ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow the appeal and enhance compensation in M.C.O.P.No.235 of 2020, dated 03.01.2022 on the file of the Motor Accident Claims Tribunal/In the Court of Special District Judge, Salem.

For Appellants : M/s.Ramya V.Rao

For R2 : Mr.B.Sivakolappan

For R1 : Notice Dispensed With

JUDGMENT

Not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Court of Special District Judge, Salem in M.C.O.P.No.235 of 2020, dated 03.01.2022, the claimants have come before this Court.

2. It is the case of the appellants/claimants that the husband of the 1st claimant, father of the 2nd claimant and son of the 3rd claimant namely Shanawas died in a road accident that had occurred on 19.08.2019. According to the claimants, the deceased was driving his two wheeler bearing Registration No.TN-54-E-2985 in Bhavani to Sankari Main Road. When he came near Vasantham Colony Bus Stop, a car bearing Registration No.TN-12-AB-4568 belonged to the 1st respondent and insured with the 2nd respondent came in the opposite direction in a rash and negligent manner and dashed against the two wheeler, in which the deceased had travelled. As

a result of the accident, the deceased sustained grievous injuries and later died. Hence, the claim petition was filed seeking compensation of Rs.70,00,000/-.

3. The 1st respondent-owner of the car remained *exparte* before the Tribunal and the claim was contested only by the 2nd respondent-insurer of the car by filing counter on the ground that the accident had occurred only due to the reckless driving of the deceased.

4. Before the Tribunal, the 1st appellant/1st claimant was examined as PW.1 and two other witnesses were examined as PW.2 and PW.3 and 19 documents were marked as Exs.P1 to P19 on behalf of the claimants. On behalf of the 2nd respondent/Insurance Company, no witness was examined and no document was marked. The copy of acknowledgment in I.T.Returns (2019-20), bills for sales and bills for payment of G.S.T., were maked as Ex.X1, Ex.X2 and Ex.E3 respectively.

5. The Tribunal based on the evidence available on record, came to the conclusion that the accident had occurred only due to the rash and

negligent driving of the car by its driver. The compensation payable to the claimants was quantified at Rs.13,25,000/-. Not satisfied with the quantum of compensation, the claimants have come before this Court.

6. The learned counsel appearing for the appellants as well as the 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 the notional income of Rs.10,000/- fixed by the Tribunal is very meagre one and the same shall be enhanced by taking into consideration the fact that the deceased was running an Electrical Shop.

8. The learned counsel appearing for the 2nd respondent/Insurance Company would submit that the claimants have not produced any concrete evidence to prove the avocation and income of the deceased and hence, the Tribunal was justified in fixing Rs.10,000/- as notional income.

9. In the claim petition, it was stated by the claimants that the deceased was an Electronic Shop owner and was earning a sum of Rs.50,000/- per month. In order to prove that the deceased was running a shop in the name of BISMI STARTERS, the claimants produced Ex.P15-Copy of the Registration of G.S.T. The claimants also filed Ex.X1-acknowledgement for filing Income Tax Returns for the year 2019-20 by examining Auditor as PW.3. However, the Income Tax Returns for the year 2019-20 was filed subsequent to the death of deceased. The Auditor, who was examined as PW.3 clearly admitted that during the life time of deceased, he had not paid Income Tax.

10. In these circumstances, the IT Returns filed subsequent to the death of deceased will not advance the case of the claimants. Even if there is no proof to fix income for the deceased, by taking into consideration the facts and circumstances of the case, this Court can fix reasonable amount as notional income of the deceased. In the case on hand, the accident had occurred in the year 2019. Taking into consideration the date of accident and cost of living and also the fact that the deceased was running an

Electronic Shop, this Court is inclined to fix Rs.16,500/- per month as notional income for the deceased.

11. As per Ex.P3-Aadhaar Card, the Tribunal fixed the age of the deceased at 39 years. Therefore, the claimants are entitled to 40% enhancement towards future prospects. The applicable multiplier is 15. Since there are three dependents, 1/3rd of the amount shall be deducted towards his personal expenses. Accordingly, the loss of dependency is fixed at Rs.27,72,000/- (Rs.16,500 x 1.4 x 12 x 15 x 2/3).

12. The Tribunal awarded only Rs.60,000/- under the head loss of love and affection for the claimants 2 and 3 and the same is enhanced to Rs.80,000/-. Out of which, the 2nd claimant is entitled to Rs.40,000/- under the head loss of love and affection and the 3rd claimant is entitled to Rs.40,000/- under the head loss of parental consortium as per the decision of the Apex Court in ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680***. The amount of Rs.40,000/- awarded by the Tribunal under the head loss of consortium to wife is confirmed. The amount of Rs.25,000/- awarded by the Tribunal

under the head funeral expenses is increased to Rs.30,000/- under two heads funeral expenses and loss of estate.

13. In view of the discussions made earlier, 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.12,00,000/-	Rs.27,72,000/-	**Enhanced**
2.	Loss of Love and Affection to 2nd claimant and loss of parental consortium to 3rd claimant.	Rs.60,000/-	Rs.80,000/-	**Enhanced**
3.	Loss of consortium to 1st claimant	Rs.40,000/-	Rs.40,000/-	**Confirmed**
4.	Funeral Expenses + Loss of Estate	Rs.25,000/-	Rs.30,000/-	**Enhanced**
Total		**Rs.13,25,000/-**	**Rs.29,22,000/-**	**Enhanced by Rs.15,97,000/-**

14. Accordingly, the compensation amount payable to the claimants is enhanced to Rs.29,22,000/- from Rs.13,25,000/-. Out of the above said award amount, the 3rd claimant-mother of the deceased is entitled to Rs.3,00,000/-. The minor 2nd claimant is entitled to Rs.10,00,000/-. The

1st claimant-wife of the deceased is entitled to Rs.16,22,000/-.

15. The 2nd Respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.29,22,000/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, to the credit of M.C.O.P.No.235 of 2020 on the file of the Motor Accident Claims Tribunal, Court of the Special District Judge, Salem, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the claimants 1 and 3 are permitted to withdraw their respective share of the award amount by making formal application before the Tribunal.

16. The share of the minor 2nd claimant shall be deposited in anyone of the Nationalized Banks under a Fixed Deposit Scheme **for a period of three years** which shall be renewed periodically until he 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 **once in three months** and the same shall be used for the welfare of the minor 2nd claimant.

17. With the above directions, the Civil Miscellaneous Appeal is allowed. The appellants/claimants are directed to pay applicable additional court fee. It is made clear that the claimants are not entitled to claim interest for the delay period of 1031 days as per the order made in C.M.P.No.2971 of 2025, dated 19.03.2025. No costs.

22.04.2025

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

To

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2.IFFCO TOKIO General Insurance Co. Ltd.,
Policy issuing office No.28, north usman road,
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(Rep by its Salem office LIC colony opp. To
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3.The Section Officer,
VR Section, High Court,
Madras.

S.SOUNTHAR, J.

dm

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