IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2025

CORAM

THE HON'BLE Mr. JUSTICE R. SURESH KUMAR
AND
THE HON'BLE Dr. JUSTICE A.D.MARIA CLETE

C.M.A.No.1006 of 2023

1.Neela
2.R.Kalaipreethi (minor)
3.R.Devaiyani (minor)
4.Sagunthala
5.Ranganadan (2nd and 3rd petitioner minor
rep. by their mother and N.F. 1st appellant) .. Appellants

Vs.

1.S.Indira (set *ex parte*)

2.The New India Assurance Co. Ltd.
No.232, NSC Bose Road, LIC Buidling
Opp. MBA Gate, Chennai 600 001 .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.10.2022 made in M.C.O.P.No.3867 of 2018 on the file of the II Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

For Appellants : Mr.T.G.Ravichandran
For 1st Respondent : *Ex parte*
For 2nd Respondent : Mrs.S.R.Sumathy

JUDGMENT

(Delivered by R. SURESH KUMAR, J.)

This Civil Miscellaneous Appeal has been directed against the award dated 17.10.2022 passed by the II Motor Accident Claims Tribunal (II Court of Small Causes), Chennai, in M.C.O.P.No.3867 of 2018.

2. Due to a motor vehicle accident that took place on 30.04.2018, one Ravi, who was riding the two-wheeler with registration No.TN07 W 5699 died, as the heavy goods vehicle bearing registration No.TN04 AT 9744 hit the two-wheeler.

3. Insofar as the liability is concerned, it is fixed on the owner of the heavy goods vehicle. Therefore, the insurer has to pay the compensation. To that extent, there has been no dispute as no appeal has been filed by the insurance company.

4. Now, this appeal has been filed only by the claimants seeking enhancement of compensation.

5. Heard Mr.T.G.Ravichandran, learned counsel for the appellants and Mrs.S.R.Sumathy, learned counsel for the 2nd respondent/insurance company.

6. The learned counsel for the appellants pointed out that the deceased Ravi was the owner of the load auto and he himself was the driver. Out of this load auto business, he was able to earn up to Rs.30,000/- per month and he had been paying Rs.13,000/- per month to the bank, as he had taken loan to purchase the said load auto.

7. The Tribunal, though Ex.P8 being the bank statement filed to establish that a sum of Rs.13,000/- had been paid every month as due payable to the bank, had not accepted or fully believed, fixed the monthly earning of the deceased as Rs.15,000/- and accordingly, by applying multiplier 13 and after deducting three-fourth as personal expenses by adding 25% as future prospects, ultimately, came to the conclusion and fixed the loss of income and dependency at Rs.21,93,750/- and on other heads, *i.e.,* loss of estate, loss of consortium and funeral expenses, altogether awarded a sum of Rs.24,02,800/- as compensation with interest @ 7.5% p.a.

8. Therefore, the learned counsel for the appellants seek indulgence of this Court as the monthly earning fixed by the Tribunal is far low.

9. However, the learned counsel appearing for the respondent/insurance company submitted that even after the demise of said Ravi, the claimants *i.e.,* the family members of the deceased were able to repay the said loan amount by paying the monthly due of Rs.13,000/-. When that being so, it is not only on the basis of the deceased, such an earning was possible to the family of the deceased, but also through some other source of income and hence, the fixation of Rs.15,000/- as monthly earning of the deceased by the Tribunal is on the right side and it does not warrant any interference of this Court, the learned counsel contended.

10. We have considered the said rival submissions made by both sides and perused the materials placed before this Court.

11. Ex.P8 has been produced before this Court which clearly shows that every month a sum of Rs.13,025/- was paid as due for the loan secured by the deceased for purchasing the load auto which he was driving for rental purposes.

12. If a person is able to pay a sum of Rs.13,000/- as due every month, certainly, his income must have been more than that because, then only, after meeting his personal expenses as well as his family expenses *i.e.*, 50% of the earning, the remaining 50% could have been paid as due to the bank. This position is supported by a decision of the Hon'ble Supreme Court in ***Gurpreet Kaur and Others Vs. United India Insurance Co. Ltd. and Others (2023 ACJ 279)***, where the deceased prior to the accident was paying a sum of Rs.11,550/- towards the tractor loan and the said payment was being made even after his death.

13. Admittedly, after the accident took place on 12.11.2014 in the case referred *surpa,* the fact that the family members of the deceased continued to pay Rs.11,550/- would not alter the situation and therefore, the Tribunal in the said case, fixed a sum of Rs.25,000/- as monthly earning, which, in fact, was reversed by the High Court. However, reversing the said decision of the High Court, the Hon'ble Supreme Court, in the decision cited *supra* has *inter alia* held as under :

> *"5. It is not in dispute that the deceased was 25 years' old and was hale and hearty. He was stated to be working as a contractor for lifting of earth and was earning Rs. 50,000/- per month. It has also come*

on record that the deceased had purchased a Tractor bearing registration No. HR-05-AL-3294 for which he had taken a loan of Rs. 3,90,533/- from Kotak Mahindra Bank. The deceased was regularly paying the monthly instalment of Rs. 11,550/- towards the tractor's loan from 10.03.2014 onwards and the entire loan liability was discharged by 24.03.2015 with payment being made even after his death.

6. Keeping in mind the rate at which EMI was being paid, the Tribunal held that the deceased must be earning at least Rs. 25,000/- per month prior to his death in the accident. After taking ¼th of monthly income of the deceased towards personal expenses, the Tribunal applied multiplier of 18 and assessed the total compensation as Rs. 43,75,000/-. The High Court, unfortunately, overlooked the factors relied upon by the Tribunal to assess the monthly income of the deceased at Rs. 25,000/- per month. The High Court came to the conclusion that the mere fact that the deceased had paid instalments of the loan could not itself be an evidence that the money actually represented his income or can form the basis for assessment of income of the deceased at Rs. 25,000/- per month. Taking into consideration the Notification issued by the State of Haryana, fixing minimum wage at the relevant time, the High Court assessed the income of the deceased at Rs. 7,000/- per month, and on this premise, as stated above, the compensation was reduced.

9. In our considered view, the Tribunal's approach is quite justified in law as well as on facts. In the summary proceedings where the approach of the Tribunal's determination must be in conformity with the object of the welfare legislation, it was rightly held that the monthly income of the deceased could not be less than Rs. 25,000/-. The reason assigned by the High Court to reduce the monthly income of the *deceased is totally cryptic and has no rationale. The Notification of Minimum Wages Act can be a guiding factor only in a case where there is no clue available to evaluate monthly income of the deceased. Where positive evidence has been led, no reliance on the Notification could be placed, particularly when it was nobody's case that the deceased was a labourer as presumed by the High Court."*

14. Exactly, the same position is confronted by us in this case, as here also, a sum of Rs.13,000/- was paid as monthly dues towards the loan taken by the deceased for purchasing a load auto and merely because, the said loan was paid even after the demise of the owner of the vehicle, it does not alter the situation. The monthly income of the person who paid a sum of Rs.11,550/- as due for the loan, had been fixed at Rs.25,000/- in the case given *supra.* When that being so, here, the monthly income of the person who paid Rs.13,000/- per month as loan due, certainly, can be fixed as not less than Rs.25,000/-.

15. Therefore, the approach of the Tribunal in this regard fixing the monthly earning of the deceased at Rs.15,000/- is far low and therefore, it needs to be interfered with.

16. Taking note of the aforesaid facts, we do feel that the monthly income of the deceased can be fixed at Rs.25,000/-. If 25% future prospects is added with Rs.25,000/-, the amount would be Rs.25,000 + Rs.6,250 = Rs.31,250/- and one-fourth is deducted towards personal expenses *i.e.,* Rs.7,812/-, Rs.23,438/- will be the monthly earning. By adopting multiplier 13, loss of earning comes to Rs.36,56,328/- (Rs.23,438 x 12 x 13). As far as the amounts awarded by the Tribunal under the remaining heads are concerned, we do not want to interfere with the same. Therefore, the modified award amount would be Rs.38,46,328/-, details of which is given below:

S.No.	***Head***	***Amount now awarded (Rs.)***
1	Loss of earning	36,56,328
2	Loss of consortium (4x40,000 = 1,60,000)	1,60,000
3	Loss of estate	15,000
4	Funeral expenses	15,000
	Total	**38,46,328**

17. The total award amount *viz.*, Rs.38,46,328/- to be payable by the respondent/insurance company to the appellants/claimants. Accordingly, the impugned award is modified and enhanced to the aforesaid amount which shall be deposited by the respondent/insurance company to the credit of M.C.O.P.No.3867 of 2018 on the file of the II Motor Accident Claims Tribunal (II Court of Small Causes), Chennai, within a period of four weeks form today.

On such deposit being made, the appellants/claimants are entitled to withdraw the same without any further reference to this Court. Since the 4th appellant/claimant is dead, the apportionment as directed by the Tribunal to be followed, except for the 4th appellant/claimant and whose portion shall be equally distributed to all other remaining dependants.

With these modifications, this Civil Miscellaneous Appeal is partly allowed. No costs. Connected C.M.P. is closed.

[R.S.K.,J.] [A.D.M.C., J.]
21.03.2025

Index : Yes / No
Neutral Citation : Yes/No
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To
II Motor Accident Claims Tribunal
(II Court of Small Causes), Chennai.

R. SURESH KUMAR, J.
AND
A.D.MARIA CLETE, J.

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