IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.887 of 2025

1.Sangeetha

2.Minor Durdeshwaran
(Rep. by his next friend/guardian/mother Sangeetha)

3.Sendumani

Palanisamy (Died) ... Appellants

vs.

1.Jeevanantham

2.The United India Insurance Co., Ltd.,
No.77, Oriental Complex, A.A.Street,
Salem District. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow the above civil miscellaneous appeal and enhance the award amount in the Order dated 19.01.2023 made in M.C.O.P.No.877 of 2021, on the file of the Motor Accident Claims Tribunal / Special District Judge Court, Salem.

For Appellants : M/s.P.Neelavathi
for M/s.C.Paraneedharan

For R2 : Mr.P.Shankaranarayanan

JUDGMENT

Not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal / Special District Judge Court, Salem in M.C.O.P.No.877 of 2021, dated 19.01.2023, the claimants have come by way of this appeal.

2. It is the case of the claimants that the husband of the 1st claimant, father of the 2nd claimant and son of the claimants 3 and 4 namely Jeevanantham died in a road accident that had occurred on 23.12.2020. It is the case of the claimants that the deceased was driving a two wheeler bearing Registration No. TN 34-AC-2410 in Tiruchengode to Kokkarayanpettai Main Road from East to West direction. When he came near Pilikkal Medu, a lorry bearing Registration No.TN 28-AA-2350 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 two wheeler driven by the deceased. As a result of the accident, the deceased sustained grievous injuries and died. Therefore, a claim petition was filed seeking compensation of Rs.25,00,000/-.

3. The 1st respondent-owner of the lorry and 2nd respondent-insurer of the lorry filed their respective counters and resisted the claim petition on the ground that the accident had occurred only due to the negligence on the part of the deceased. It was stated that the deceased attempted to overtake a Car without noticing the lorry coming in the opposite direction and invited accident.

4. Before the Tribunal, the 1st appellant/1st claimant was examined as PW.1 and on behalf of the claimants, 21 documents were marked as Exs.P1 to P21. On behalf of the respondents, no witness was 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 negligence on the part of the driver of the lorry belonged to the 1st respondent insured with the 2nd respondent. The amount payable to the claimants was quantified at Rs.13,75,000/-. Aggrieved by the quantum of compensation, the claimants have come before this Court.

6. The learned counsel appearing for the appellants/claimants 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 appeal.

7. The learned counsel appearing for the appellants/claimants would submit that the accident had occurred in the year 2020 and hence, sum of Rs.10,000/- fixed by the Tribunal as notional income of the deceased including future prospects is very much on lower side and the same requires enhancement.

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

9. In the claim petition, it was stated by the claimants that the deceased was employed as Backing Labour Worker in M/s.Christy Fridgram

Industry, Andipalayam, Tiruchengode Taluk, Namakkal District and was earning a sum of Rs.20,000/- per month. However, in order to prove the avocation and income of the deceased, the claimants have not produced any evidence.

10. In the case on hand, the accident had occurred in the year 2020. Taking into consideration the year of accident and prevailing cost of living, this Court is inclined to fix Rs.16,500/- as notional income of the deceased. The Tribunal fixed the age of the deceased at 27 years based on Ex.P18-Aadhaar Card. Therefore, the claimants are entitled to 40% enhancement towards future prospects. The applicable multiplier is 17.

11. It is not in dispute that at the time of accident there were 4 dependents. After filing of original petition, the 4th claimant namely Palanisamy-father of the deceased died leaving behind his wife namely the 3rd claimant and son of pre-deceased son, the 2nd claimant herein. Therefore, the benefit of estate of the deceased will go to the claimants 2 and 3. Since they were 4 claimants at the time of accident, 1/4th of the amount shall be deducted towards personal expenses of the deceased. In that case, the loss of dependency would be Rs.35,34,300/- (Rs.16,500 x 1.4 x 12 x 17 x 3/4).

12. The accident had occurred on 23.12.2020, three years after the delivery of judgment of the Apex Court in ***National Insurance Company Limited vs. Pranay Sethi and others*** dated 31.10.2017. Therefore, the claimants are entitled to 10% enhancement towards conventional damages. The 1st claimant is entitled to Rs.44,000/- under the head loss of consortium. The 2nd claimant is entitled to Rs.44,000/- under the head loss of love and affection. The claimants 3 and 4 are entitled to Rs.44,000/- each under the head parental consortium. Therefore, a sum of Rs.80,000/- awarded by the Tribunal under the head love and affection is increased to Rs.1,32,000/- (under the heads love and affection and parental consortium). The amount of Rs.40,000/- awarded by the Tribunal under the head loss of consortium is increased to Rs.44,000/-. In addition to the above said sum, the claimants are entitled to Rs.33,000/- under the heads funeral expenses and loss of estate.

13. The Tribunal deducted a sum of Rs.3,00,000/- towards share of 4th claimant, who died pending original petition. As discussed earlier, the benefit of the estate of 4th claimant will go to claimants 2 and 3 in their capacity as his legal representatives. Therefore, the Tribunal ought not have

deducted the share of the 4th claimant from the award amount. Therefore, the said deduction is set aside.

14. Accordingly, the total amount payable to the claimant is fixed at Rs.37,43,300/-. 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 Income	Rs.15,30,000/-	Rs.35,34,300/-	**Enhanced**
2.	Loss of love and affection	Rs.80,000/-	Rs.1,32,000/- (under the head loss of love and affection and parental consortium)	**Enhanced**
3.	Loss of consortium	Rs.40,000/-	Rs.44,000/-	**Enhanced**
4.	Funeral Expenses + Loss of Estate	Rs.25,000/-	Rs.33,000/-	**Enhanced**
Total		Rs.16,75,000/-	Rs.37,43,300/-	**Enhanced**
Rs.3,00,000/- towards the share of the 4th petitioner has to be deducted from the total compensation		Rs.3,00,000/-	-	**Set Aside**
Total		Rs.13,75,000/-	Rs.37,43,300/-	**Enhanced by Rs.23,68,300/-**

15. Accordingly, the compensation awarded by the Tribunal is

enhanced to Rs.37,43,300/- from Rs.13,75,000/-. Out of the above said sum, the 3rd claimant-mother of the deceased is entitled to Rs.4,00,000/-. The 2nd claimant-minor son of the deceased is entitled to Rs.16,00,000/-. The 1st claimant is entitled to Rs.17,43,300/-.

16. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.37,43,300/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation (excluding the delay period of 134 days as per the order made in C.M.P.No.99 of 2025, dated 20.01.2025) to the credit of M.C.O.P.No.877 of 2021 on the file of the Motor Accident Claims Tribunal / Special District Court, Salem, after deducting the amount deposited already, if any, 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 shares by making formal application before the Tribunal.

17. 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 in the said Fixed Deposit Account **once in three months** and the same shall be used for the welfare of the minor 2nd claimant. The appellants/claimants are directed to pay applicable additional court fee.

18. With the above directions, the Civil Miscellaneous Appeal is allowed. No costs.

25.03.2025

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

To

1.The Motor Accident Claims Tribunal /
Special District Judge Court, Salem.

2.The United India Insurance Co., Ltd.,
No.77, Oriental Complex, A.A.Street,
Salem District.

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

S.SOUNTHAR, J.

dm

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