WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2025

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

C.M.A.No.2921 of 2022
and
C.M.P.No.22597 of 2022

The Branch Manager,
United India Insurance Company Ltd.,
No.4, Royal City, Karur Road,
Thiruchirapalli District - 620 002. ... Appellant

-Vs-

1. Tamizhmani
2. Elankavi
3. Elamaran
4. Alamelu
5. Hariharan ... Respondents

PRAYER : Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award dated 19.07.2021 made in M.C.O.P.No.226 of 2019 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Cuddalore, Virudhachalam.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.I.Meganathan for R1 to R3
R4 - died
R5 - NR notice

https://www.mhc.tn.gov.in/judis

WEB COPY

JUDGMENT

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.)**

This civil miscellaneous appeal has arisen out of the award passed by the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Cuddalore at Virudhachalam dated 19.07.2021 made in M.C.O.P.No.226 of 2019.

2. Due to the road accident on 26.05.2019, one Selvarasu died as he was riding a two wheeler with Registration No.TN-31-X-5017 Super Splendor which was hit by another two wheeler with Registration No.TN-47-BZ-0801 Yamaha. Because of this road accident since the said Selvarasu deceased, the wife, children and mother of the deceased joined together and filed the said MCOP seeking a compensation of Rs.75,00,000/-.

3. The Tribunal has considered the evidence adduced before it where the deceased since was working as a Headmaster in a Government School, his salary certificate had been taken into account and his monthly salary has been fixed at Rs.87,226/-. At the time of accident, he was 57 years old and was about to retire within few months. Since he was the permanent employee, 15% has

https://www.mhc.tn.gov.in/judis

WEB COPY

been taken as future prospects, all put together, the yearly income was fixed where the Tribunal has deducted 1/4th as the personal expenses of the deceased. After deducting 1/4th as his personal expenses, the total yearly earnings has been taken into account where the multiplier '9' was employed. By employing multiplier '9', the Tribunal has found a sum of Rs.74,28,213/- would be the amount under the head 'loss of earnings' with 'future prospects'.

4. With regard to the other heads, for wife consortium, a sum of Rs.40,000/- was awarded, for 'love and affection' of the two children, though they are major and the mother, totally a sum of Rs.1,00,000/- was awarded, for 'loss of estate', Rs.15,000/- was awarded, for 'funeral expenses', Rs.15,000/- was awarded, for 'medical expenses', a sum of Rs.42,249/- was awarded and for 'transport expenses', Rs.10,000/- was awarded, therefore, the total award amount arrived at by the Tribunal was Rs.76,55,462/-.

5. However since the Tribunal found that the deceased at the time of accident was riding the two wheeler without the helmet, a contributory negligence has been fixed on him as 15%, therefore 15% of the award amount has been reduced, ultimately the award amount has been fixed at Rs.65,07,143/- and that shall be paid with interest at the rate of 7.5% by the appellant / Insurance Company.

https://www.mhc.tn.gov.in/judis

WEB COPY

6. Aggrieved over the said award, especially the quantum, the Insurance Company has preferred this present appeal.

7. Heard Mr.D.Bhaskaran, learned counsel appearing for the appellant / Insurance Company and Mr.I.Meganathan, learned counsel appearing for the respondents 1 to 3.

8. It is informed by the learned counsel appearing for the respondents 1 to 3 that the fourth respondent herein, namely, Alamelu who is the mother of the deceased is no more now, therefore, the claimants are the wife and two children, i.e., one daughter and one son.

9. Therefore, the learned counsel appearing for the appellant / Insurance Company would submit that the deceased admittedly was aged about 57 years 8 months at the time of accident, therefore, utmost, he would have got further four months service, thereafter he had to superannuate. Once he become superannuated, he would not have earned that much of salary as has been taken into account of the Tribunal instead he would be getting only the pension which must be 50% of the salary amount, therefore, the calculation that has been made by the Tribunal by taking into account of the salary bill of the current month at

https://www.mhc.tn.gov.in/judis

WEB COPY

the time of the accident to the extent of Rs.87,226/- may not be justifiable, hence on that head, the said amount of Rs.87,226/- taken as a salary of the deceased may not be the correct calculation, he contended.

10. The next submission of the learned counsel appearing for the appellant / Insurance Company is that, one of the children, i.e., female child has already got married and she is living with her husband at the matrimonial house, therefore, she cannot be added as one of the family members of the deceased family for calculating the personal expenses of the deceased at the rate of 1/4th instead it should have been taken only as 1/3rd of the amount as personal expenses. Had it been taken as 1/3rd of the amount of personal expenses of the deceased, the total calculation of the award amount could have been a different one and accordingly, on that count also, the calculation made by the Tribunal is erroneous, he contended.

11. However Mr.I,Meganathan, learned counsel appearing for the respondents 1 to 3 would submit that even though the daughter got married, since there is some family dispute she is now living only with the mother and brother, i.e., the parental family of the daughter and therefore, she is also entitled for the expenses to be shared, hence the calculation of 1/4th expenses

https://www.mhc.tn.gov.in/judis

WEB COPY

for personal expenses of the deceased taken by the Tribunal is to be justified, he contended.

12. The learned counsel appearing for the respondents would also submit that under the head 'love and affection' for two children and mother, only a sum of Rs.1,00,000/- alone was awarded by the Tribunal, but minimum Rs.40,000/- would be entitled to each of the children as well as the mother and if that being so, the calculation would be a different one. Therefore, the learned counsel appearing for the respondents would seek indulgence of this Court to reject this appeal.

13. We have considered the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

14. Insofar as the two grounds mainly urged by the learned counsel appearing for the appellant / Insurance Company is concerned, firstly the deceased was aged 57 years and 8 months at the time of accident, therefore soon he would be retired and once he retired, he may not be in a position to earn this much of amount as a salary as has been calculated now. The said

https://www.mhc.tn.gov.in/judis

WEB COPY

arguments cannot be accepted by this Court for simple reasons that after retirement, no doubt, the deceased would be entitled only to get the pension, since he is a qualified Teacher and was working as a Headmaster of the School, therefore even after superannuation, he would be getting a chance of joining in any institution and also go for a private tuitions, thereby he would have been in a position to earn more, therefore such kind of future prospects and future earnings cannot be quantified as if that he would be confined only with the pension which is going to be given to him after retirement. Therefore, that arguments adduced on behalf of the learned counsel appearing for the appellant/ Insurance Company is to be rejected and accordingly, it is rejected.

15. With regard to the other ground urged by the learned counsel appearing for the appellant / Insurance Company that since one of the children, i.e., daughter already got married and she is in the parental house, therefore, the deduction of $1/4^{th}$ as personal expenses of the deceased may not be justified, it must be $1/3^{rd}$ is concerned, we find some force in the said contention of the learned counsel for the appellant.

16. Even though it was argued by the learned counsel appearing for the respondents that, there has been some family dispute, therefore the daughter is

https://www.mhc.tn.gov.in/judis

WEB COPY

living with the mother and brother, there has been no evidence adduced before the Tribunal to that effect and hence, it cannot be accepted that the daughter is also living with the deceased family and therefore, 1/4th expenses should be given to the daughter also, thereby 1/4th expenses deducted by the Tribunal by taking into account of four persons in the family may not be correct and to that extent, we are inclined to accept the grounds urged on behalf of the learned counsel appearing for the appellant and taking that, the personal expenses of the deceased must be 1/3rd and not 1/4th .

17. Insofar as other heads are concerned, we are not inclined to interfere with any of the other heads where the amounts have been awarded by the Tribunal except to make a slight modification under the head 'love and affection' for the children and mother as there were three persons, only a sum of Rs.1,00,000/- was awarded, it must be Rs.40,000/- each, totally Rs.1,20,000/-. Therefore, that requires minimum enhancement.

18. After all these calculations, if we calculate the award amount payable to the victim's family, i.e., respondents / claimants, the following calculation would come:

https://www.mhc.tn.gov.in/judis

WEB COPY

Rs.11,00,476/- X 1/3rd = Rs.7,33,651/- (Rs.11,00,476/- (-) Rs.3,66,825)

Rs.7,33,651 X 9 = Rs.66,02,859/-

Rs.66,02,859/- + Rs.2,47,249/- (other heads) = Rs.68,50,108/-

Rs.68,50,108 X 15%= Rs.58,22,592/- (Rs.68,50,108/- (-) Rs.10,27,516/-)

19. For 'loss of earnings' and 'future prospects' would be Rs.66,02,859/- plus the award under other heads including the enhanced amount of Rs.1,20,000/- under the head 'love and affection', would be Rs.2,47,249/-, the total amount would be Rs.68,50,108/-, out of which, 15% for contributory negligence is to be deducted which comes to Rs.10,27,516/-. If that amount is deducted, the remaining amount would be Rs.58,22,592/-.

20. Therefore, the total award amount is Rs.58,22,592/- and the same shall be paid by the appellant / Insurance Company to the respondents / claimants with interest at the rate of 7.5% till the date of payment.

21. It is submitted by the learned counsel appearing for the appellant / Insurance Company that, a part of the amount that has already been deposited, if so the remaining amount shall be deposited within a period of two months from the date of receipt of a copy of the judgment. On such deposit being made,

https://www.mhc.tn.gov.in/judis

WEB COPY

it is open to the respondents / claimants to withdraw the entire amount as per the apportionment ordered by the Tribunal. But however since the mother is no more, the mother's share also be withdrawn by the other claimants equally.

22. With these modifications, this Civil Miscellaneous Appeal is allowed in part accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) **(A.D.M.C., J.)**
20.02.2025

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Motor Accidents Claims Tribunal,
   III Additional District and Sessions Judge,
   Cuddalore, Virudhachalam.

2. The Section Officer,
   V.R. Section,
   High Court,
   Chennai.

https://www.mhc.tn.gov.in/judis

WEB COPY

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

vji

C.M.A.No.2921 of 2022
and
C.M.P.No.22597 of 2022

20.02.2025

https://www.mhc.tn.gov.in/judis
https://www.mhc.tn.gov.in/judis