



C.M.A.No.1923 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 03.03.2025

CORAM:

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

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The Oriental Insurance Company Ltd.,
No.281, Cross Cut Road, Opp. To I.A.B., photo studio,
P.B. No. 2907, Gandhipuram,
Coimbatore – 641 012. ... Appellant

Vs.

1.P. Selvi
2.A. Pachamuthu
3.P. Ashok Parasuraman ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 05.04.2023 made in M.C.O.P.No.41 of 2018 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Mettur, Salem.



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For Appellant : Mr. M. Krishnamoorthy.

For Respondents : Mr. G. Kesavan for R1 & R2.
R3 – Exparte.

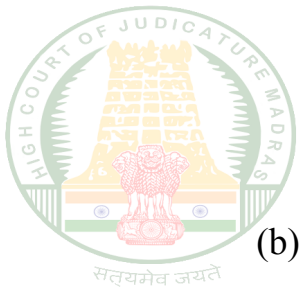
J U D G M E N T

(Delivered by Dr. A.D. Maria clete, J)

This Civil Miscellaneous Appeal has been filed by the insurance company challenging the award dated 05.04.2023 made in M.C.O.P.No.41 of 2018 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Mettur, Salem.

2.The brief facts of the case are as follows;

(a) On 18.08.2017, when the deceased viz., Sanjay, son of the respondents 1 and 2 was travelling in a motorcycle bearing Reg. No. TN52 U 4711 at NH-37, Thoppur to Mechery main road, a lorry bearing Reg. No. TN 37 BR 6255, owned by the third respondent and insured with the appellant, driven by its driver in a rash and negligent manner, hit the deceased and he suffered fatal injuries on the spot. Hence, claim petition has been filed by the respondents 1 and 2 against the appellant and the third respondent seeking compensation for the death of their son.



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(b) The appellant has filed their counter denying the averments of the claim petition stating that the deceased does not wear helmet and has not possessed the valid driving license and has tried to overtake the lorry, as a result of which, the deceased succumbed to injuries. Hence, the learned counsel for the appellant submitted that they are not liable to pay the compensation.

(c) The first respondent has been examined as PW1 and 14 documents were marked viz., Ex.P.1 to Ex.P.14. No documents were marked on the side of the appellant.

(d) The Tribunal after going through the pleadings and materials available on record, awarded a sum of Rs. 54,38,300/- as compensation to the respondents 1 and 2 after fixing 15% contributory negligence on the deceased and directed the appellant to pay the same. Challenging the said award, the appellant has come before this Court by way of this appeal.

3. The learned counsel for the appellant/insurance company disputes this award on multiple grounds, including the excessive determination of income and compensation. The Tribunal wrongly fixed the deceased's monthly income at Rs.20,000/-, referencing a case involving a B.E. student, whereas the deceased



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was a courier delivery boy and thereby granting excessive compensation of Rs.60,48,000/- towards loss of income and no deduction for personal expenses was made. It is further contended that the compensation awarded under the other heads are on the higher side. Thus, the entire negligence has to be fixed on the deceased and therefore the appellant / insurance company wants this Court to set aside the tribunal's order and reduce the compensation.

4.However, the learned counsel for the respondents 1 and 2 submitted that the tribunal has rightly fixed a sum of Rs.20,000/- as monthly income. However, it is submitted that tribunal erred in fixing 15% contributory negligence on the deceased since he was not negligent of the accident and sought for enhancement of compensation.

5.Heard the parties and perused the materials available on record.

6.It is the contention of the learned counsel for the appellant/insurance company that the cause of the accident was not sufficiently proven. The main contention was that the Occupation and income of the deceased were not proven



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with acceptable documents (appointment order, bank statements, etc.). However

they mainly contested the quantum of compensation, especially regarding the income of the deceased which was not backed by proper documentation. Though the tribunal has fixed 15% contributory negligence on the deceased, the same was not supported by documents and hence, the same is deleted. Further, it is seen that the Tribunal had erroneously fixed Rs.20,000/- as monthly income for the deceased who was working as a courier boy. In the light of the documents, this Court fix Rs.16,500/- as monthly income. Further, it is seen that the tribunal has not deducted any amount towards personal expenses contrary to *Sarla Verma & Others v. Delhi Transport Corporation (2009)* and hence, 50% of his personal expenses has been deducted from the income of the deceased who was a bachelor. However, 40% future prospects has been rightly added by the tribunal and thus, the income of the deceased would be Rs.16,500/- + 40% future prospects (Rs.6,600) = Rs.23,100. After deducting 50%, the income would be Rs.23,100 (-) 50% = Rs.11,550/- X 12 X 18 = Rs.24,94,800/-.

7.Further, the tribunal erred in awarding compensation of Rs.30,000/- under the head parental consortium after awarding compensation under the head loss of



love and affection and hence, the same is deleted and further Rs.2,00,000/-

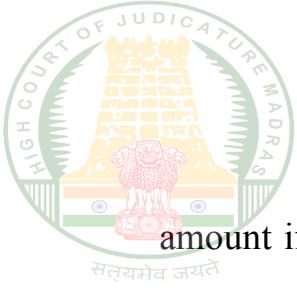
awarded under the head pain and sufferings is not sustainable and the same is deleted. Further, Rs.90,000/- awarded under the head loss of love and affection is on the higher side and the same is reduced to Rs.80,000/- and the compensation of Rs.20,000/- awarded under the head funeral expenses is also on the higher side and the same is reduced to Rs.15,000/-. Further, Rs.10,000/- awarded towards transport expenses is just and the same is confirmed. Accordingly, the compensation is now revised as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1	Loss of income	Rs.6,048,000	Rs.2,494,800	Reduced
2	Pain and sufferings	Rs.200,000	--	Set aside
3	Loss of love and affection	Rs.90,000	Rs.80,000	Reduced
4	Parental consortium	Rs.30,000	--	Set aside
5	Funeral Expenses	Rs.20,000	Rs.15,000	Reduced
6	Transport Expenses	Rs.10,000	Rs.10,000	Confirmed



S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
	Total	Rs.63,98,000 after deducting 15% contributory negligence Rs.54,38,300	Rs.2,599,800	Reduced

8. In the result, the Civil Miscellaneous Appeal filed by the appellant/ insurance company is disposed of modifying the award of the Tribunal to the extent indicated above. The appellant/insurance company is directed to deposit the award amount now determined by this Court, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit along with interest and costs, if not already deposited and withdraw the excessive amount already deposited if any, within a period of two months from the date of receipt of a copy of this Judgment. On such deposit, the respondents 1 and 2 are permitted to withdraw the award amount along with proportionate interest and costs, less the



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amount if any, already withdrawn as per the apportionment fixed by the Tribunal.

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(R.S.K., J) (A.D.M.C., J)
03.03.2025

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To

1.The Motor Accident Claims Tribunal,
Sub-ordinate Court,
Mettur, Salem.

2.The Section Officer,
VR Section,
High Court of Madras,
Chennai.



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