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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.623 of 2025

1.Lakshmi
2.Sathish Kumar
3.Soundharya
4.Valliyammal

... Appellants

Vs.

1/M/s.A.Avinash Kumar Francis,
S/o.Arul Francis,
No.F/5, 2nd Floor,
Jawahar Flats, Karneeswarar Koil Street,
1st Lane, Mylapore, Chennai – 4.

2.The Manager,
HDFC Ergo General Insurance Company Limited,
No.94/95, RR Tower, 2nd Floor,
TVK Guindy Industrial Estate,
Chennai – 600 032.

... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 04.01.2024 made in MCOP.No.3187 of 2021 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.

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For Appellant :Mr.N.M.Elumalai

For Respondent :Notice dispensed with for R1
Mr.T.K.Prem Kumar for R2

JUDGMENT

Not satisfied with the quantum of compensation awarded by the Tribunal, the injured claimant have come before this Court.

2. According to the appellants/claimants, the husband of the first claimant, father of claimants 2 and 3 and son of 4th claimant viz., Sampath died in a road accident that had occurred on 04.03.2021. According to them, when the deceased was walking across the road from East to West, the Bajaj Dominar motorcycle belonged to the first respondent and insured with the second respondent came in a rash and negligent manner and hit the deceased and as a consequence, the deceased sustained grievous injuries and died. Hence the claim petition was filed seeking compensation of Rs.35,00,000/-.

3. The first respondent owner of the two wheeler remained ex-parte before the Tribunal and the claim petition was opposed only by the

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insurer. It was the case of the second respondent that the accident had occurred only due to the negligence on the part of the deceased who has crossed the road and the second respondent also denied age, income etc of the deceased.

4. 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 two wheeler belonged to the first respondent and insured with the second respondent and the amount payable to the claimant was quantified at Rs.13,17,000/-. Not satisfied with the quantum of compensation, the claimants have come before this Court.

5. Both the learned counsel appearing for the appellant and the 2nd respondent Insurance Company have not advanced any arguments on the aspects of negligence and liability. Therefore, the facts necessary for deciding negligence and liability have not been discussed in this judgment. The present appeal is confined to the quantum of compensation.

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6. The learned counsel appearing for the appellants would submit that the Tribunal committed an error in fixing notional income of the deceased at Rs.10,000/- without looking into the various documents produced by the claimants to prove the income of the deceased.

7. The learned counsel appearing for the second respondent would submit that though representative of the employer of the deceased was examined as PW.3, he did not produce the account book of employer to show that the amount claimed by him was credited to the account of the deceased. Therefore, it was his submission that the documents produced by PW.1 cannot be relied upon and hence the Tribunal was not justified in fixing notional income at Rs.10,000/-.

8. It is the case of the claimants that the deceased was working as a Security Guard with responsibility of the Building Maintenance and was earning Rs.25,000/- per month. The representative of the deceased was examined as PW.3, he clearly deposed in his evidence that the deceased worked as a Facility Supervisor in Kumaravel Packaging Private Limited at the time of accident. He also deposed that he joined the company as a

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Security and thereafter, got promotion as Facility Supervisor. He deposed that the last drawn salary of deceased was Rs.25,000/-. The certificate issued by the employer of the company was marked as Ex.P11. A perusal of the same would suggest that the deceased had worked as Facility Supervisor in the above mentioned company and was drawing the salary of Rs.25,000/- per month. In order to prove that the salary was credited into the bank account of the deceased, the copy of the bank account of the deceased maintained with Union Bank as salary savings account, was produced. Therefore, it is clear that Ex.P10, is the copy of the salary account of the deceased. The details of the amount credited into the account of the deceased from 01.02.2020 to 30.06.2021 are available in the said document. Ex.P20 is the salary statement issued by the employer of the deceased regarding various payments made to the appellant towards salary received in advance etc., for a period from 06.02.2017 to 02.03.2021.

9. A close scrutiny of Ex.P10-Bank statement and P20-salary statement issued by the employer would indicate that the deceased has been receiving salary of Rs.22,500/- all along. It is also seen that for the month of January 2021, he received the salary of Rs.25,000/-

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and for the months of December 2020 and February 2021, he received Rs.23,000/-. However, the claimants have not produced any document to show that the deceased who joined the company as Security Guard, got promoted as Facility Supervisor. Taking into consideration all these matters, this Court feels that it would be appropriate to fix the income of the deceased at Rs.22,500/-.

10. Based on Ex.P2-death certificate, Ex.P3-death report and Ex.P5-post mortem certificate, the Tribunal fixed age of the deceased as 51. Therefore, the claimants are entitled to 10% enhancement towards future prospects and the applicable multiplier is '11'. Since there are four dependants 1/4th of the amount shall be deducted for the personal expenses.

11. It is vehemently contended by the learned counsel appearing for the second respondent/insurance company that PW.1 had admitted that the second claimant was employed. A perusal of PW.1 evidence would suggest that she deposed that the second claimant got a job just two months prior to the date of her examination. Therefore, it is clear that on the date of accident, the second claimant was not an earning

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member. Therefore, he can also be treated as a dependant. Accordingly, deduction shall be 1/4th.

12. In view of the discussions made earlier, the loss of dependency is fixed at Rs.24,50,250/- (Rs.22,500x1.1x12x11x3/4). The Tribunal granted 20% enhancement towards conventional damages. The accident had occurred in the year 2021, after three years from the date of pronouncement of judgment in ***Pranay Sethi*** case, less than six years. Therefore, the claimants are entitled to only 10% enhancement in respect of conventional damages. The first claimant is entitled to Rs.44,000/- towards loss of consortium, the claimants 2 and 3 are entitled to Rs.44,000/- each towards loss of love and affection and the 4th claimant is entitled to Rs.44,000/- towards parental consortium. In addition to the above said amount, the claimants are entitled to Rs.16,500/- each under the heads loss of estate and funeral expenses.

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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
1.	Loss of dependency	Rs.10,89,000/-	Rs.24,50,250/-
2.	Loss of Consortium	Rs.1,92,000/-	Rs.1,76,000/-
3.	Loss of Estate	Rs.18,000/-	Rs.16,500/-
4.	Funeral Expenses	Rs.18,000/-	Rs.16,500/-
	Total	Rs.13,17,000/-	Rs.26,59,250/-

14. In view of the discussions made earlier, the compensation awarded by the Tribunal is enhanced from Rs.13,17,000/- to Rs.26,59,250/-. The 2nd respondent is directed to deposit the enhanced award amount together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, after deducting the amount already deposited, if any, to the credit MCOP.No.3187 of 2021 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai, within a period of six weeks from the date of receipt of copy of this judgment. The claimants are permitted to withdraw the said amount, less

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the amount already withdrawn, if any by filing a proper application before the Tribunal. Out of the said amount, the first claimant is entitled to Rs.12,59,250/-, the second and third claimants are entitled to Rs.5,00,000/- (each) and 4th claimant is entitled to Rs.4,00,000/-.

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

24.04.2025

Index : Yes/No
Speaking order:Yes/No
Neutral Citation:Yes/No
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To
1.The Motor Accident Claims Tribunal,
II Judge, Court of Small Causes, Chennai

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

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