IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :25.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.544 of 2025

1.R.Vallinayagi
2.Minor R.Vaidhegi
3. Minor R.Dhinesh Babu
Saroja (Died)
(Minor appellants rep. By mother, guardian,
NF R.Vallinayagi) ... Appellants

Vs.

1.A.Johnbritto
2. The Branch Manager
National Insurance Co., limited
BO, 165, Nethaji road, Manjakuppam,
Cuddalore-607001 ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to allow the appeal and enhance the compensation in M.C.O.P. No. 1682 of 2019 dated 20.12.2022 on the file of the Motor Accidents Claims Tribunal / I Additional District and Session Judge (FAC), Cuddalore.

For Appellants : Mr.Ramya V.Rao
For Respondents :M/s.T.Suryakala for R2
for M/s.R.Rathna Thara

JUDGMENT

Aggrieved by the quantum of compensation granted by the Tribunal, the claimants have come before this court by way of this appeal.

2. It is not in dispute that the husband of the 1st claimant, father of the claimants 2 and 3 and son of the 4th claimant namely Rengasamy died in a road accident that had taken place on 18.05.2019. It was the case of the claimants that when deceased was walking on the extreme left-hand side of the road from North to South direction, the two wheeler belonged to the first respondent with registration number PY01CJ8007 came from behind in a rash and negligent manner and dashed against the deceased. As a result of the accident, the deceased was thrown away and sustained fatal injuries. In spite of the treatment, he died on 21.05.2019. The claimants laid the claim petition seeking compensation of Rs 50,00,000/-. Pending main original petition, the 4th claimant died. The claimants 2 and 3, in their capacity as children of predeceased son, entitled to represent her estate. Therefore, benefit of her estate will go to them. The Tribunal, based on the evidence

available on record, awarded a compensation of Rs.26,38,200/-. Not satisfied with the quantum of compensation, the claimants have come before this court.

3. Before the Tribunal, the 1st respondent remained *ex-parte.* Therefore, the notice to him is dispensed with.

4. Heard the arguments of the learned counsel for the appellants/claimants and the learned counsel for the second respondent /Insurance company.

5. Both the learned counsel for the appellants as well as learned counsel for the second respondent have not advanced any arguments on the questions of negligence and liability. Hence, the facts necessary for deciding those questions are not discussed in this appeal.

6. The learned counsel for the appellants/claimants submitted that the accident had occurred in the year 2019. However, the Tribunal fixed the notional income only at Rs.12,600/- and the same requires enhancement. The learned counsel has not advanced any arguments on the award passed by the Tribunal under various other heads.

7. The learned counsel for the second respondent/ Insurance

Company submitted that the claimants have not produced any document to prove the avocation as well as the income of the deceased. Therefore, the notional income of Rs.12,600/- fixed by the Tribunal is reasonable. In the claim petition, it was averred by the claimants that the deceased was employed as a security guard in a hotel at Cuddalore and he was also engaged in wholesale/ retail cashew nut business. It was also claimed that the deceased was earning a sum of Rs.30,000/- per month.

8. In order to prove the income, the claimants produced the salary certificate issued by the employer as Exhibit P10. A perusal of the same would indicate that the claimant was paid a salary of Rs. 15,000/- per month towards his employment as security guard in Sudha Grand Hotel, Cuddalore.

9. The Tribunal rejected the salary certificate produced by the claimants mainly on the ground that the author of the salary certificate was not examined and proceeded to fix the notional income at the rate of Rs.12,600 per month. Even if there is no acceptable documentary evidence to prove the avocation and income of the deceased, this Court,

taking into consideration the facts and circumstances of the case, can fix the notional income. In the case on hand, the accident had occurred in the year 2019. Therefore, taking into consideration the date of accident and the prevailing cost of living, this court has to fix the amount as notional income which should be fair in the facts and circumstances of the case. In the case on hand, it is claimed by the claimants that the deceased was employed as security guard and also engaged in wholesale/ retail cashewnut business. Taking into consideration all these aspects, this court feels that it would be appropriate to fix Rs.16,500/- as notional income for the deceased. In that case, the claimants are entitled to Rs.33,26,400/- towards loss of dependency.

Rs.16,500 x 1.4 x 12 x 16 x 3 / 4=Rs.33,26,400/-

10. The Tribunal, without taking into consideration the date of accident, erroneously granted 10% enhancement while fixing the compensation under the heads loss of consortium, loss of love and affection etc., The judgment in ***Pranay Sethi*** case was delivered in the

year 2017. The accident had occurred well within 3 years i.e., in the year 2019. In such circumstances, the claimants are not entitled to 10% enhancement. Therefore, the first claimant is entitled to Rs.40,000/- towards loss of spousal consortium. The claimants 2 and 3 are entitled to Rs.80,000/- towards loss of love and affection. The 4th claimant is entitled to Rs.40,000/- towards loss of filial consortium. The said amount forms part of estate of 4th claimant and the benefit will go to the claimants 2 and 3. Apart from the above said amount, the claimants are entitled to Rs.30,000/- under the head funeral expenses and loss of estate. The amount of Rs.10,000/- awarded under the head transportation charges is confirmed. Accordingly, the compensation amount awarded by the tribunal is enhanced to Rs.35,26,400.

11. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:-

Sl. No	**Description**	**Amount awarded by Tribunal (Rs)**	**Amount awarded by this Court (Rs)**	**Award confirmed or enhanced or granted**

1.	Loss of dependency	24,19,200/-	33,26,400/-	Enhanced
2.	Loss of estate and funeral expenses	33,000/-	30,000/-	Reduced
3.	Loss of Filial Consortium(4th claimant)	44,000/-	40,000/-	Reduced
4.	Loss of Spousal Consortium(1st claimant)	44,000/-	40,000/-	Reduced
5.	Loss of Love and Affection (claimants 2 and 3)	88,000/-	80,000/-	Reduced
6.	Transportation Expenses	10,000/-	10,000/-	Confirmed
	Total	**26,38,200/-**	**35,26,400/-**	**Enhanced by Rs.8,88,200/-**

12. With the above modifications, the Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.26,38,200/- is hereby enhanced to Rs.35,26,400/-. The appellants are entitled to interest at the rate of 7.5% per annum (excluding the delay period, if any)from the date of filing of the claim petition till the date of realization. The second respondent /Insurance company is directed to deposit the enhanced award amount along with interest and

costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this Judgment.

13. As far as apportionment is concerned, the claimants 2 and 3, who are minors are entitled to a sum of Rs.10,00,000/- each. The first claimant is entitled to Rs.15,26,400/-.

14. The 2nd and 3rd appellants/ 2nd and 3rd claimants being minors, their shares of award amount are directed to be invested in anyone of the Nationalized Banks under a Fixed Deposit Scheme **for a period of three years** which shall be renewed periodically until they attain majority and the 1st appellant/1st claimant, being the Natural Guardian of the minors 2nd and 3rd claimants, is permitted to withdraw the interest accrued thereon **once in three months** and the same shall be used for the welfare of the minors 2nd and 3rd claimants. The 1st claimant is permitted to withdraw her share of award amount, along with interest and costs, less the amount if any, already withdrawn, by making proper application before the Tribunal. The appellants are directed to pay the applicable additional court fee . No costs.

25.02.2025

Index:Yes/No
Internet:Yes/No
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To

1. Motor Accident Claims Tribunal,
   I Additional District and Session Judge (FAC), Cuddalore.

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

S.SOUNTHAR, J.

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