IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.540 of 2025

1.Vimala

2.Pavithara

3.Sasikumar

4.Minor.Mythili

5.Siddhammal ... Appellants

vs.

1.Sri Srinivasa Engineering works,
TS-no.3 SIDCO Industrial Estate,
Mettur, Salem 636402.

2.Future General India Insurance Co Ltd,
2nd Floor, Srivari Shopping,
2/91 New Bus Stand Road, Near ARRS Multiples
Salem-4. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to enhance the compensation amount without deducting any amount which was given by the 1st respondent made in Judgment and decree dated 01.09.2022 made in M.C.O.P.No.1220 of 2021 on the file of the Special District Court, MCOP Tribunal, Salem by allowing this Civil Miscellaneous Appeal.

For Appellants	: Mr.S.P.Yuaraj
For R1	: Mr.A.V.Arun
For R2	: Mr.M.B.Raghavan for M/s.M.B.Gopalan Associates

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Special District Court, MCOP Tribunal, Salem in M.C.O.P.No.1220 of 2021, dated 01.09.2022, the claimants have come by way of this appeal.

2. It is not in dispute that the husband of the 1st claimant, father of the claimants 2 to 4 and son of the 5th claimant namely Selvaraj died in a road

accident that had occurred on 18.03.2021. It was the case of the claimant before the Tribunal that when deceased Selvaraj was engaged in his work site, the chain of the JCB Vehicle bearing Registration No.TN 93 D 3760 got disconnected and fell on the head of the deceased and thereby, caused death. It was claimed that the deceased was aged about 44 years and he was earning Rs.20,000/- per month as a Crusher Machine Operator. The claim petition was laid seeking compensation of Rs.50,00,000/- against the owner and insurer of the JCB Vehicle.

3. The 1st respondent filed counter and claimed that JCB Vehicle was operated by its driver in a careful manner and unfortunately, its bucket hit on the deceased whereby the accident took place. It was also stated that the 1st respondent paid a sum of Rs.10,00,000/- (Rs.2,00,000/- by way of cash and Rs.8,00,000/- lakhs by way of Demand Drafts to the claimants) and therefore, sought for dismissal of the claim petition.

4. The 2nd respondent/Insurance Company filed counter stating that the accident had occurred only due to the negligence on the part of the deceased and the 2nd respondent/Insurance Company was not at all liable to

pay the compensation. The 2nd respondent also raised a plea that the amount of Rs.10,00,000/- paid by the 1st respondent shall be deducted while computing the compensation payable to the claimants.

5. Before the Tribunal, the 1st appellant/1st claimant was examined as PW.1 and on behalf of the claimants, 13 documents were marked as Exs.P1 to P13. On behalf of the respondents, two witnesses were examined as RW.1 and RW.2 and on their behalf, 9 documents were marked as Exs.R1 to R9. A copy of Register was marked as Ex.X1.

6. The Tribunal based on the evidence available on record came to the conclusion that the accident had occurred only due to the negligence of the driver of the 1st respondent's JCB Vehicle and quantified the compensation payable to the claimants at Rs.11,55,000/-. After deducting Rs.10,00,000/- paid by the 1st respondent to the claimants, the Tribunal fixed the compensation at Rs.1,55,000/-. Aggrieved by the same, the claimants have come by way of this appeal.

7. The learned counsel appearing for the appellants would submit that the Tribunal committed a grave error in deducting Rs.10,00,000/- allegedly paid by 1st respondent to the claimants. The learned counsel further submits that the said amount was paid by the 1st respondent as a repayment of loan obtained by him. The learned counsel further submits that the Tribunal fixed notional income of Rs.10,000/- for the accident occurred in the year 2021 and the same is very much on lower side.

8. The learned counsel appearing for the 2nd respondent/Insurance Company would submit that Ex.R8-Receipt signed by the claimant for having received Rs.10,00,000/- from the 1st respondent would establish the payment of Rs.10,00,000/- to the claimants towards compensation and hence, the Tribunal is justified in deducting the said amount. The learned counsel further submits that the claimants have not produced any documentary evidence to prove the avocation and income of the deceased and hence, the amount of Rs.10,000/- fixed by the Tribunal as notional income is justified.

9. In the claim petition, it was stated by the claimants that deceased was employed as Crusher Machine Operator and was earning Rs.20,000/- per month. However, in order to prove the avocation or income of the deceased, the claimants have not produced any documentary evidence. Therefore, based on the facts and circumstances of the case, the notional income has been fixed. The accident had occurred in the year 2021, taking into consideration the date of accident and cost of living, this Court feels that it would be appropriate to fix a sum of Rs.18,000/- as notional income. The amount of Rs.10,000/- fixed by the Tribunal is very much on lower side. Ex.P2-Postmortem Certificate and Ex.P3-Aadhaar Card of the deceased would establish that the age of the deceased was only 44 years on the date of accident. Therefore, the claimants are entitled to 25% enhancement towards future prospects. The applicable multiplier is 14 instead of 11 as applied by the Tribunal. In such case, the claimants are entitled to Rs.28,35,000/- towards loss of dependency (Rs.18,000 x 1.25 x 12 x 14 x 3/4).

10. In addition to the above said amount, the 1st claimant is entitled to Rs.44,000/- towards loss of consortium. Since the accident had occurred after three years from the date of judgment passed by the Apex Court in ***National Insurance Company Limited vs. Pranay Sethi and others*** dated 31.10.2017. The claimants 2, 3 and 4 are entitled to Rs.44,000/- each under the head loss of love and affection. The 5th claimant is entitled to Rs.44,000/- under the head of loss of parental consortium. The claimants are entitled to Rs.33,000/- under the heads of funeral expenses and loss of estate. In all the claimants are entitled to Rs.30,88,000/-.

11. It is the case of the 1st respondent that after accident, it paid a sum of Rs.10,00,000/- to the claimants towards compensation. Ex.R8 is the receipt executed by the claimants acknowledging the receipt of Rs.10,00,000/- from the 1st respondent. A close perusal of the said document would indicate that the claimants received Rs.2,00,000/- by way of cash and Rs.8,00,000/- by way of demand drafts drawn in Central Bank of India, Mettur Branch. The said exhibit was marked through PW.1 during her cross examination by learned counsel for the 1st respondent.

12. Though it was claimed by the claimants that the 1st respondent only repaid the loan obtained from the claimants, there is no positive evidence to support the said case of the claimants. A perusal of the Ex.R8 clearly established that the amount of Rs.10,00,000/- was paid by the 1st respondent only as a compensation for the death of Selvaraj. The signatures of the claimants found in Ex.R8 were clearly admitted by PW.1 in her evidence. Therefore, this Court holds Rs.10,00,000/- was paid by the 1st respondent only as a compensation for the death of Selvaraj.

13. The Tribunal based on the evidence available on record came to the conclusion that accident had occurred only due to the negligence of the driver of the 1st respondent. Therefore, the primary liability is on the 1st respondent to pay the compensation. In the case on hand, the 1st respondent already paid a sum of Rs.10,00,000/- to the claimants and the same is established by Ex.R8. As mentioned earlier, this Court quantified the compensation payable to the claimants at Rs.30,88,000/-. Since a sum of Rs.10,00,000/- was already paid by the 1st respondent, the 2nd respondent/insurer is liable to pay the remaining amount of Rs.20,88,000/-

to the claimants. Accordingly, 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 dependency	Rs.9,90,000/-	Rs.28,35,000/-	**Enhanced**
2.	Loss of love and affection	Rs.1,00,000/-	Rs.1,32,000/-	**Enhanced**
3.	Loss of consortium	Rs.40,000/-	Rs.44,000/-	**Enhanced**
4.	Loss of parental consortium	-	Rs.44,000/-	**Granted**
5.	Funeral Expenses+Loss of Estate	Rs.25,000/-	33,000/-	**Enhanced**
Total		**Rs.11,55,000/-**	**Rs.30,88,000/-**	**Enhanced**
Already petitioners received Rs.10,00,000/- from the 1st respondent		**Rs.10,00,000/-**	**Rs.10,00,000/-**	**Confirmed**
Balance Total		**Rs.1,55,000/-**	**Rs.20,88,000/-**	**Enhanced**

14. In view of the discussions made earlier, the 2nd respondent/Insurance Company is directed to deposit the award amount of Rs.20,88,000/- 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 618 days as per order in C.M.P.No.22577 of 2024 for the enhanced amount) after deducting the amount already deposited, if any, to the credit

of M.C.O.P.No.1220 of 2021 on the file of the Special District Court, MCOP Tribunal, Salem, within a period of six weeks from the date of receipt of copy of this judgment.

15. On such deposit, the appellants/claimants are entitled to withdraw the award amount by making proper application before the Tribunal, subject to satisfying the Tribunal as to the attainment of majority by 4th claimant. The appellants/claimants are directed to pay applicable additional court fee.

16. With the above directions, the Civil Miscellaneous Appeal is allowed. It is always open to the 1st respondent to work out its remedy against the 2nd respondent/Insurance Company under contract of insurance in so far as the amount of Rs.10,00,000/- paid by it to the claimants. No costs.

12.03.2025

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

To

1.The Special District Court,
MCOP Tribunal, Salem.

2.Future General India Insurance Co Ltd,
2nd Floor, Srivari Shopping, 2/91 New Bus Stand Road,
Near ARRS Multiples, Salem-4.

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

S.SOUNTHAR, J.

dm

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