



C.M.A.No.220 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.220 of 2025

1.Parvathi

2.Manimekalai

3.Ashok Kumar

4.Vijayalakshmi

... Appellants

Vs.

1.M.Manonmani

2.M/s.National Insurance Company Limited,
Divisional Office No.I, L.R.N.Complex,
Saradha College Main Road,
Hasthampatti, Salem-7.

3.Saraswathi

... Respondents



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PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.07.2023 made in M.C.O.P.No.727 of 2022 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.C.N.Prarthana

For Respondents : Mr.K.Swathi for R2

J U D G M E N T

The appellants / claimants 1 to 4, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Special District Court, Salem, in M.C.O.P.No.727 of 2022, dated 01.07.2023, have filed this appeal.

2. On 06.02.2022 at about 03.00 a.m., when the deceased Sivakumar was walking in South Mariamman Kovil Street, the TATA SFC 909 bearing Registration No.TN 63 AH 2367 belonging to the first respondent was driven by its driver in a rash and negligent manner and hit



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against the deceased, due to which, the deceased sustained grievous injuries all over the body and died on the spot. Under these circumstances, the claim petition came to be filed by the claimants/wife, daughters, son and the mother of the deceased, before the Tribunal seeking for compensation.

3. Before the Tribunal, on the side of the claimants, P.W.1 was examined and Exs.P1 to P8 were marked. On the side of the respondents, no witness was examined and Ex.R1 to Ex.R3 were marked. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the first respondent. Having reached such a finding, the Tribunal proceeded to fix the total compensation at Rs.11,55,000/- under various heads. The second respondent was directed to pay the above compensation and recover the same from the first respondent thereafter.



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4. The appellants/claimants 1 to 4, not being satisfied with the quantum of compensation awarded by the Tribunal, have filed this appeal seeking compensation. The fifth claimant, who was the mother of the deceased, is arrayed as the third respondent in the present appeal.

5. The learned counsel appearing for the appellants submitted that the deceased was doing business and was earning a sum of Rs.50,000/- per month. However, the monthly income of the deceased was fixed as 10,000/- including the future prospects of 10% and the age of the deceased was 49 years at the time of accident, but, the multiplier '11' has been adopted and the appropriate multiplier is '13' for the age of the deceased. He further submitted that the compensation awarded under the other heads is also on the lower side and the same is liable to be enhanced.

6. The first respondent remained *ex-parte* before the Tribunal.



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7. Per contra, learned counsel appearing for the second respondent / Insurance company submitted that the Tribunal taking into consideration all the relevant documents has rightly fixed the compensation, which does not require any interference. Hence, he prays for dismissal of this appeal.

8. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

9. In the instant case, the deceased was doing business and was aged about 49 years at the time of accident and the accident had taken place in the year 2022. However, the monthly income of the deceased along with the future prospects of 10% was fixed as Rs.10,000/- which is on the lower side. Hence, this Court is inclined to increase the monthly income to Rs.18,000/- p.m, by applying the ratio laid down by the Apex Court in ***Syed Sadiq & Ors. Vs. The Divisional Manager, United India Insurance***



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Co. Ltd (2014 (2) SCC 735). With regard to the future prospects, the Apex Court has observed in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi and others** reported in **2017 (16) SCC 680** that the addition towards future prospects ought to be 25% on the income of the deceased. While being so, the Tribunal has fixed the future prospects at 10% along with the monthly income in passing the award. Therefore, as per the dictum of the Supreme Court, 25% has to be fixed towards future prospects. The Tribunal has applied the multiplier for the age of 49 years as '11', however, the applicable multiplier for the age of the deceased (i.e.,) 49 years is '13' in terms of **Sarla Verma & Others. Vs. Delhi Transport Corporation & Others (2009 (6) SCC 121)**. If so, the loss of income/dependency would be:

Monthly Income	:	Rs. 18,000/-
Add: Future Prospects 25% of Rs.18,000/-	:	Rs. 4,500/- ----- Rs. 22,500/-
Annual Income (22,500 * 12)	:	Rs. 2,70,000/-



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Less : Personal expenses		
Rs.2,70,000/- * 1/4	:	Rs. 67,500/-

		Rs. 2,02,500/-
Multiplier	:	x 13

Loss of income	:	Rs.26,32,500/-

10. The compensation under the head 'Loss of Love & Affection' could be awarded only to the appellant Nos.2 to 4 and the third respondent/daughters, son and mother of the deceased, however, the first appellant/wife of the deceased was also awarded the compensation under the head loss of love and affection, even though the compensation under the head loss of consortium was granted to her. Hence, the compensation awarded under the head loss of love and affection to the appellant No.1/wife is hereby set aside.

11. Insofar as the compensation awarded under the head loss of love and affection to the appellant Nos.2 to 4 and the third respondent/daughters, son and mother of the deceased is concerned, the



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Tribunal has awarded only a sum of Rs.20,000/- to each of them, but as laid down in *Pranay Sethi case*, the amount that could be awarded under the said head is Rs.44,000/- to each of the appellant Nos.2 to 4 and the third respondent, and accordingly, the said amount is enhanced to Rs.44,000/- to each of the appellant Nos.2 to 4 and the third respondent. The compensation awarded under the head loss of consortium at Rs.40,000/- to the first appellant/wife is also meagre and hence, the same is enhanced to Rs.44,000/-.

12. The compensation awarded by the Tribunal under the head funeral expenses at Rs.25,000/- is excessive and the same is reduced to Rs.16,500/-. The Tribunal has not awarded any compensation under the head loss of estate, hence, this Court is inclined to award a sum of Rs.16,500/- under the head loss of estate.



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13. Insofar as the contention of the learned counsel for the second respondent / Insurance Company regarding 'pay and recovery' ordered by the Tribunal is concerned, the Hon'ble Supreme Court in *National Insurance Co. Ltd., vs. Swaran Singh* reported in (2004) 3 SCC 297, has held that where the driver did not have the valid driving licence and there are breach of policy conditions, 'pay and recover', can be ordered in case of third-party risks. In such circumstances, since the driver of the TATA SFC 909 was not having valid and effective driving license at the time of the accident and there are breach of policy conditions, this Court does not find any error in the order passed by the Tribunal directing 'pay and recover'.

14. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads is modified as under:

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Loss of Income	Rs.9,90,000/-	Rs.26,32,500/-
2.	Love and affection (Rs.44,000 X 4)	Rs.1,00,000/-	Rs.1,76,000/-



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<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
3.	Loss of consortium	Rs.40,000/-	Rs.44,000/-
4.	Funeral Expenses	Rs.25,000/-	Rs.16,500/-
5.	Loss of Estate	-	Rs.16,500/-
	Total	Rs.11,55,000/-	Rs.28,85,500/-

14. In the result, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs.11,55,000/- is hereby enhanced to Rs.28,85,500/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.727 of 2022 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem, at the first instance and then recover the same from the first respondent as ordered by the Tribunal. On such



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deposit, the appellants and the third respondent are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn, as per the apportionment fixed by the Tribunal, by making proper application before the Tribunal. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

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



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To

1.The Motor Accidents Claims Tribunal,
Special District Court, Salem.

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



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M.DHANDAPANI, J.

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