IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 21.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.511 of 2023

1. P.Jamuna Devi
2. V.Muralidharan ... Appellants

Vs.

1. Sri Vinayaga Handlers Private Ltd.,
   No.32/1, Arathoon Road, Royapuram,
   Chennai 600 101.

2. Oriental Insurance Co. Ltd.,
   Oriental House First Floor,
   216/115, Prakasam Salai,
   Broadway, Chennai 600 108.

3. R.Marichamy

4. Cholamandalam MS General Insurance Co.Ltd.,
   No.102, Kaliamman Koil Street,
   Virugambakkam, Chennai 600 092. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to enhance the award amount passed in MCOP No.1266 of 2012, dated 13.08.2019 on the file of the Special Sub Court No.1, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Appellants : Mr.K.Ponmani
for Mr.V.Arun Kanagaraj

For Respondents : Ms.R.Sreevidhya for R2
Mr.J.Michael Visuvasam for R4

JUDGMENT

Aggrieved by the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal.

2. It is the case of the claimants that on 31.07.2021, the husband of the first claimant and father of the second claimant, namely Vittobaraju travelled in a car bearing registration No.TN 02 AC 1910. When he was proceeding in Ambattur Estate, Chennai, a container lorry belonging to the first respondent and insured with the second respondent came from the northen side and dashed against the car. As a result of accident, the said Vittobaraju sustained multiple injuries and died on the same day. Therefore, the claimants filed petition seeking compensation of Rs.83,60,000/-

3. The first respondent, owner of the lorry remained exparte before the Tribunal and the claim petition was resisted by the second respondent/insurer of lorry by filing counter. The second respondent denied the manner of accident as alleged in the claim petition. It was the case of the second respondent that the accident had occurred only due to the negligence on the part of the driver of the car. The third and fourth respondents are the owner and insurer of the car, in which, the deceased had travelled.

4. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred only due to the negligent driving of the driver of the container lorry, insured with the second respondent. The amount payable to the claimants was quantified at Rs.31,72,696/-. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have come before this court.

5. The learned counsel for the appellant/claimants by taking this court to Ex.P18, salary certificate, would submit that the deceased

received a sum of Rs.40,097/- as salary from his employer, namely, Madras Metropolitan Water Supply and Sewerage Board and the same has not been properly taken into consideration by the Tribunal and the income of the Tribunal was fixed only at Rs.30,314/-.

6. The learned counsel for the second respondent/ insurance company would submit that in the salary certificate- Ex.P8 for the month of January 2011, net income of the deceased was mentioned as Rs.30,363/-. and hence,the Tribunal was justified in fixing notional income of the deceased at Rs.30,363/-.

7. A perusal of Ex.P8 would suggest that for the month of January 2011, the cross salary of the deceased was Rs.37,617/-. But, the Tribunal considered only the net salary of the deceased alone. Further, a perusal of Ex.P8 would suggest that the deduction were made to P.F., LIC, etc and these deductions cannot be ignored while fixing income of the deceased.

8. The Ex.P18 is the salary bill issued to the deceased for the month of July 2011 and he died on 31.07.2011. Therefore, he received the salary for all the 31 days in that month. A perusal of Ex.P18 would indicate that the total salary of the deceased was Rs.40,097/-. The deduction towards GPF, LIC and etc. are for the benefit of the deceased, which will form part of estate of deceased and the same cannot be deducted while fixing the monthly income. Hence, this court is inclined to fix the monthly income of the deceased at Rs.40,097/-, as evidenced by Ex.P18. At the relevant point of time, age of the deceased was 53. The deceased was employed in Madras Metropolitan Water Supply and Sewerage Board. Since the deceased was a permanent employee, the claimants are entitled to 15% enhancement towards future prospects. Therefore, annual income of the deceased, including Future Prospects is fixed at Rs.5,53,339/-. From the said amount, the income tax payable by the deceased has to be deducted.

9. At the relevant point of time, the income tax payable to the annual income upto Rs.1,60,000/- was Nil. For the annual income

from Rs.1,60,001 - 5,00,000/-, the rate of income tax to be paid was 10% and for and above Rs.5,00,000/-, 20% should be paid. Therefore, total income tax payable was Rs.44,668/- After deducting income tax payable, annual income of the deceased would come to Rs.5,08,671/-. The applicable multiplier is '11'. At the time of filing the claim petition, there were two persons depending on the income of the deceased and hence 1 /3 shall be deducted towards personal expenses of the deceased. Accordingly, the claimants are entitled to Rs.37,30,254/- (5,08,671 x 11 x 2/3) towards loss of dependency.

10. In addition to the above said amount, the claimants are entitled to Rs.15,000/- each towards Funeral Expenses and Loss of Estate. Further, the claimants 1 and 2 are also entitled to Rs.40,000/- each towards loss of consortium and loss of love and affection respectively. However, the amount of Rs.5,000/- awarded under the head transportation charges is set aside,as it is covered under loss of estate.

11. Accordingly, the compensation awarded by the Tribunal is revised as under:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	30,72,696	37,30,254	enhanced
2.	Loss of consortium to first claimant	40,000	40,000	confirmed
3.	Loss of love affection to 2nd claimant	25,000	40,000	enhanced
4.	Loss of estate	15,000	15,000	granted
5.	Funeral expenses	15,000	15,000	granted
6.	Transport charges	5,000	--	set aside
	Total	**31,72,696**	**38,40,254**	enhanced by 6,67,558

12. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.31,72,696/- is hereby enhanced to **Rs.38,40,254/-** together with interest at 7.5% per annum from the date of petition till the date of deposit.

13. From the above compensation, the first claimant/wife is entitled to Rs.23,40,254/- and the second claimant/son is entitled to Rs.15,00,000/-

14. The second respondent/insurance company is directed to deposit the compensation amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment. On such deposit, the claimants shall be permitted to withdraw their respective shares of the compensation amount along with interest and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal. There shall be no order as to costs.

21.03.2025

Index:Yes/No
Internet:Yes/No
mst

To

1. The Special Sub Judge-I,
   Motor Accident Claims Tribunal,
   Court of Small Causes, Chennai.

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

S.SOUNTHAR, J.

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