



CMA.No.153 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2025

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.153 of 2025

1. Devapriya
 2. R.Neelagandan
- ...Appellants

Vs.

1. R.Srinivasa Roa
 2. The New India Assurance Co.Ltd.,
Motor 3rd Party Cell, No.46, Moore Street,
Chennai – 1.
- ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 29.09.2021 made in M.C.O.P.No.104 of 2021 on the file of Motor Accident Claims Tribunal, (Special District Court No.1), Thiruvallur.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : Mr.R.Sivakumar for R2

Notice Dispensed with for R1 vide
order dated 03.01.2025

JUDGMENT

Challenging the judgment and decree dated 29.09.2021 passed in M.C.O.P.No.104 of 2021 on the file of the Motor Accident Claims Tribunal, (Special District Court No.1), Thiruvallur, the claimants have filed the above appeal seeking enhancement of compensation.



2. In view of the judgment being passed, notice to the first respondent is dispensed with.

3. It is the case of the claimants that, on 29.07.2005, at about 16.00 hours, when the deceased was walking in the mud road, at that time a lorry bearing Regn.No.AP 24 V 3159 belonging to the first respondent driven by its driver came in a rash and negligent manner and had hit the deceased, due to which the deceased sustained grievous head injuries and was succumbed to death. Thereby, the appellants, who are the parents of the deceased have filed a claim petition in M.C.O.P.No.104 of 2021 claiming a compensation of Rs.2,00,000/-.

4. Before the Tribunal, the claimants examined P.W1 and P.W.2 and marked Exs.P.1 to P.6. On behalf of the respondents, they have neither examined any witnesses nor marked any documents. After trial, the Tribunal, on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the driver of the 1st respondent's lorry and awarded a meagre amount of Rs.2,85,000/- towards compensation for the death of the deceased. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have come up with this appeal seeking enhancement of compensation.



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5. Learned counsel for the appellants submitted that the above said accident happened solely due to the rash and negligent driving on the part of the driver of the 1st respondent's lorry and the accident is of the year 2005. Admittedly, at the time of accident, the deceased was only aged about 3 years (minor). As per the decision of the Hon'ble Apex Court in the case of ***Kishan Gopal and another Vs. Lala and others reported in 2014 1 SCC 244***, the Hon'ble Apex Court had fixed a sum of Rs.30,000/- as notional income for a boy of 10 years who died in the year 1992, however, in the present case on hand, the accident is of the year 2005 and without considering the cost of living, the tribunal had taken the notional income of the deceased as only Rs.18,000/- per annum by applying the multiplier of 15, the compensation under the head “loss of dependency” was arrived at Rs.2,70,000/- which is very meagre. Further, the compensation awarded under conventional heads are also on the lower side and the same needs to be enhanced. Accordingly, he prayed for appropriate orders.

6. Per contra, the learned counsel appearing on behalf of the 2nd respondent-Insurance Company contended that, by considering all the relevant



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documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

7. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties and the parties have not raised any issue on the aspect of negligence and therefore, this Court is not venturing into the same.

9. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2005 and at the time of accident, the deceased was aged about 3 years. As per the above decision of ***Kishan Gopal and another Vs. Lala and others reported in 2014 1 SCC 244***, insofar as children are concerned, only a consolidated notional income can be fixed and the income cannot be fixed like how it is fixed to an adult. That apart, there is no question of determining the monthly income and adding future prospects towards the same.



10. As per the judgement of Hon'ble Apex Court in the case of ***Kishan Gopal and another Vs. Lala and others reported in 2014 1 SCC 244***, the Apex Court had directed a sum of Rs.30,000/- to be fixed as annual income for the children below 10 to 15 years for the accident which had taken place in the year 1992. In view of the same, this Court has to necessarily keep in mind the raise in price index and the cost of living and accordingly, the amount has to be increased. Without considering, the same, the Tribunal has fixed only a sum of Rs.18,000/- as annual income of the deceased for the accident which happened on the year 2005, which is wholly unsustainable.

11. In view of the above, the annual income in the present case on hand can be fixed at Rs.40,000/- and since multiplier 15 was applied to the multiplicand for the aforesaid decision of the Hon'ble Apex Court, the very same multiplier would be fixed to the present case on hand as well.

12. Considering the above annual income fixed, the loss of income of the family will work out to a sum of Rs.40,000/- x 15 = 6,00,000/-. Insofar as the compensation awarded under the other heads namely transport and funeral expenses are concerned, a meagre sum of Rs.15,000/- has been granted under



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the said heads. Hence, this Court is of the view that a sum of Rs.50,000/- shall be granted under conventional heads as in the case of the Hon'ble Apex Court.

13. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.104 of 2021 is modified by enhancing the compensation amount from Rs.2,85,000/- to **Rs.6,50,000/-**. The 2nd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No. 104 of 2021 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment.

14. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. The appellants are not entitled for any interest for the default period if any. The compensation awarded by this Court shall be apportioned among the appellants equally, with proportionate interest and costs. No costs.

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NCC : Yes/No

Index : Yes/No

Speaking Order : Yes/No

M.DHANDAPANI, J.



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To:

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1. Motor Accident Claims Tribunal, (Special District Court No.1), Thiruvallur.
2. The Section Officer,
V.R. Section, High Court, Madras.

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