IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :05.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.311 of 2025

1.Gurumalli
2.Sadasivam
3.Anbarasu ... Appellants

Vs.

1. M.Nausheen Naaz

2. The Divisional Manager
United India Insurance Company Limited
Motor Third Party Claims Office,
No.147/58-C, 3rd floor, Kamarajar Street,
Kancheepuram ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to allow the present appeal and pleased to enhance the amount awarded in MCOP.No.778 of 2017 dated 17.09.2020 on the file of Motor Accident Claims Tribunal(District and Sessions Judge), Additional District Court(Fast Track Court), Kanchipuram.

For appellant : Mr.K.Varadha Kamaraj

For Respondents : M/s.J.Michael Visuvasam for R2

JUDGMENT

Aggrieved by the quantum of compensation fixed by the Motor Accident Claims Tribunal, the claimants have come before this court by way of this appeal.

2. It is not in dispute that the husband of the first claimant, who is the father of the claimants 2 and 3, died in a road accident that had taken place on 18.09.2017. Based on the evidence available on record, the Tribunal fixed negligence on the first respondent bus and held that the first respondent, the owner of the vehicle and the second respondent, insurer of the 1st respondent vehicle were jointly and severally liable to pay compensation. Both the learned counsel for the appellants as well as the respondents have not advanced any arguments challenging the findings of the Tribunal with regard to the negligence and liability aspect. Therefore, the appeal is confined only to the question of quantum.

3. The learned counsel for the appellants/ claimants submitted that accident had taken place on 18.09.2017 and the Tribunal fixed notional income at Rs.5000/- and the same is very much on the lower side. The learned counsel further submits that the deceased was a mason by profession and he was earning Rs.20,000/- per month.

Therefore, the Tribunal should have fixed monthly income at Rs.20,000/- per month. Further, the learned counsel submitted that the Tribunal failed to award any amount towards the loss of love and affection for the claimants 2 and 3, who are sons of the deceased.

4. The learned counsel for the second respondent/ Insurance company submitted that as per Exhibit P4, Death Certificate, the age of the deceased was mentioned as 55 years and the Tribunal erred in fixing the age as 43 years by referring post-mortem certificate. The learned counsel further submits that in case the age of the deceased is taken as 55 years, the correct multiplier would be 11 and the claimants are entitled to 10% towards future prospects instead of 25% as awarded by the Tribunal.

5. Though the claimants claimed that the deceased was employed as a mason, they have not produced any document to prove the avocation for income. Having regard to the fact that accident had taken place in the year 2017 and the other evidence available on record, this court fixes the notional income at Rs.15,000/- per month.

6. In Exhibit P4, Death Certificate, the age of the deceased was mentioned as 55 years. The Tribunal ignored the same and fixed the age

as 43 years based on Exhibit P6, Postmortem Certificate. Having regard to the age of the first son of the deceased, which is mentioned as 25 years in the claim petition, this court feels that the age mentioned in the Postmortem Certificate may not reflect the correct age. Therefore, the entry in the Death Certificate issued by the competent authority shall be given weightage in the facts of the present case. Therefore, this Court is constrained to fix the age of the deceased as 55 years at the time of accident based on Death Certificate.

7. If the age of the deceased is taken as 55 years, the proper multiplier would be 11 instead of 14 as applied by the Tribunal. Likewise, the claimants can only claim future prospects at the rate of 10% instead of 25%. Therefore, the amount under the head 'loss of dependency' is calculated as follows:-

Rs.16,500 x 12 x 11 x 2/3 = Rs.14,52,000/-

8. In addition to that, the claimants 2 and 3 are entitled to Rs.40,000/- each towards loss of love and affection. The compensation awarded by the Tribunal under other heads are confirmed. Therefore, the award granted 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	7,00,056/-	14,52,000/-	Enhanced
2.	Funeral Expenses	15,000/-	15,000/-	Confirmed
3.	Loss of Consortium	40,000/-	40,000/-	Confirmed
4.	Loss of Estate	15,000/-	15,000/-	Confirmed
5.	Loss of love and affection	Nil	80,000/-	Granted
	Total	**7,70,056/-**	**16,02,000/-**	**Enhanced by Rs.8,31,944/-**

9. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,70,056/- is hereby enhanced to Rs.16,02,000/-.In view of the order passed by this court in condone delay petition in CMP. No. 29047 of 2024, the claimants are not entitled to claim any interest for the delay period of 786 days. The second respondent/Insurance Company is directed to deposit the enhanced sum along with interest and costs, less

the amount already deposited, if any, within a period of four weeks from the date of receipt of copy of this judgment. On deposit of the enhanced sum, the appellants/claimants are entitled to withdraw the same along with interest and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

05.02.2025

Index:Yes/No
Internet:Yes/No
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To

1. Motor Accident Claims Tribunal,
 The District and Sessions Judge
 Additional District Court (Fast Track Court),
 Kanchipuram.

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

S.SOUNTHAR, J.

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