IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2025

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

C.M.A.No.2251 of 2024

1. K.Chithra
2. K.Ilamaran @ Yaswath Kumar (minor)
3. Nithishkumar (minor)
   (Minor petitioners 2 & 3 represented by their mother, first petitioner herein)
4. Dhanabakkiyam ... Appellants

-Vs-

1. M.Palanisamy
2. The Oriental Insurance Co. Ltd.,
   No.216/115, Prakasam Road,
   Broadway,
   Chennai - 600 108. ... Respondents

PRAYER : Appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 08.01.2018 made in M.C.O.P.No.4576 of 2015 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellants	:	Mr.F.Terry Chella Raja
For Respondents	:	Mr.K.Vinod for R2 R1 - Exparte

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.)**

This civil miscellaneous appeal has been directed against the award passed by the Motor Accidents Claims Tribunal, Chennai, II Court of Small Causes, Chennai dated 08.01.2018 in M.C.O.P.No.4576 of 2015.

2. Due to road accident taken place on 04.04.2015, the husband of the first appellant / first claimant one Karthikeyan died. The deceased on the fateful day was driving a tractor bearing Registration NoTN-73-Z-4990 in Thiruporur Road, where a car bearing with Registration No.TN-09-BA-4812 driven by the driver in a rash and negligent manner dashed against the tractor driven by the deceased, as a result of which, the deceased sustained grievous injuries and died on the spot.

3. Therefore, in order to claim compensation, the wife, minor children and the mother of the deceased filed the said MCOP claiming a compensation of Rs.1,00,00,000/-.

4. The Tribunal, having considered the evidence adduced before it, has fixed the notional income of the deceased only at Rs.6,000/- per month and taking 10% towards future prospects as he was fifty plus years made an award of Rs.7,09,000/- as compensation. Aggrieved over the said quantum of award, the present appeal has been directed at the instance of the claimants.

5. Heard Mr.F.Terry Chella Raja, learned counsel appearing for the appellants and Mr.K.Vinod, learned counsel appearing for the second respondent / Insurance Company.

6. The deceased was an Agriculturalist. That apart, he was having some properties which were let in for rent and he was getting some rental income. That apart, the learned counsel for the appellants claimed that he was doing some business. Out of all these sources, he was getting income of Rs.50,000/- per month and therefore, the claimants had made such claim of compensation of Rs.1,00,00,000/-.

7. In support of the contention, the claimants filed the income tax return filed by the deceased on the previous financial years, i.e., 2013-14 and 2014-15.

8. The Tribunal having considered the document, i.e., income tax return has come to the conclusion that, only gross income has been mentioned in the income tax returns where how much of the amount that he earned per year out of his business and what business he was doing had not at all been mentioned and the Tribunal also has come to the conclusion that since he was the Agriculturalist even after his demise, the income from the agricultural land would continue to come, like that if at all the properties belong to him were let in for rent even that rental income also would continue to come even after the demise of the deceased.

9. Therefore, in that context, the Tribunal by not believing the income claimed by the claimants on the part of the deceased has come to the conclusion that, his notional income can be fixed only at Rs.6,000/- per month, based on which, 10% future prospects has been added and by deducting1/4th of the income towards the personal expenses of the deceased by employing multiplier '11', the Tribunal has come to the conclusion that the total compensation under the head for 'loss of earnings' and 'future prospects' would be Rs.6,53,400/- and for 'loss of consortium' of Rs.40,000/- and Rs.15,000/- for 'funeral expenses' also had been awarded.

10. Insofar as the notional income fixed by the Tribunal at Rs.6,000/- per month on the deceased is concerned, we do feel that, it is on the lower side. The reason being that he was an Agriculturalist and during the time of accident, he was driving the tractor, therefore he was the main pillar in undertaking the agricultural activities. Like that, even if the properties belong to him let in for rent and such rental income was coming for the family after his demise, the managerial capacity would get loss at the family, therefore, that also should be taken into account. Even though it was claimed that he was doing some business and out of the business as well agricultural and rental income, put together the gross income has been shown in the income tax return, though the entire amount has been shown in the income tax return as a gross income has not taken in to account by the Tribunal, at least some reasonable sum to be taken as notional income for the deceased, which we by taking into account of all these aspects fix at Rs.15,000/- per month.

11. If that is so, insofar as the future prospects, 10% was ordered, of course correctly by the Tribunal and the multiplier also correctly employed by the Tribunal. Taking into account of his monthly income of Rs.15,000/- by 10% as future prospects and after deducting 1/4th for the personal expenses, the amount if it is calculated by employing the multiplier '11', the following calculation under the head 'loss of earnings' would come:

Rs.15,000/- X 10% = Rs.16,500/- (Rs.15,000/- + Rs.1,500/-)
Rs.16,500 X 12 = Rs.1,98,000/-
Rs.1,98,000 X 1/4th = Rs.1,48,500/- (Rs.1,98,000 - Rs.49,500/-)
Rs.1,48,500/- X 11 = Rs.16,33,500/-

12. Insofar as under the head 'loss of consortium', only Rs.40,000/- was awarded, whereas there are two children and the mother of the deceased who are entitled to get the consortium at the rate of Rs.40,000/- each, totally Rs.1,20,000/- towards 'love and affection' Therefore, as per the present modification, the quantum would be fixed under the following heads:

S.No	***Head of Compensation***	***Amount awarded by the Tribunal (Rs)***	***Amount awarded by this Court (Rs)***
1	Loss of Earnings	6,53,400/-	**16,33,500/-**
2	Loss of Love and Affection (Rs.40,000/- * 3)	-	**1,20,000/-**
3	Loss of Consortium	Rs.40,000/-	Rs.40,000/-
4	Loss of Funeral Expenses	Rs.15,000/-	Rs.15,000/-
	Total **Rounded off**	**7,08,400/-** **7,09,000/-**	**18,08,500/-**

13. Hence in view of the aforestated discussions, the calculation that we have made, shall be the adequate compensation payable to the appellants / claimants by the second respondent / Insurance Company. Therefore, we accordingly modify the impugned award by giving a direction to the second

respondent / Insurance Company to pay the total compensation of Rs.18,08,500/- to the claimants.

14. It is stated by the learned counsel appearing for the second respondent / Insurance Company that what has been ordered by the Tribunal has already been deposited, therefore the remaining amount as per the present modification shall be deposited by the second respondent / Insurance Company within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, it is open to the appellants / claimants to withdraw the amount as per the ratio / apportionment ordered by the Tribunal. It is made clear that the interest component would be 7.5% instead of 9% as ordered by the Tribunal.

15. Accordingly, this Civil Miscellaneous Appeal is allowed in part. However, there shall be no order as to costs.

(R.S.K., J.) **(A.D.M.C., J.)**
21.02.2025

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

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To

1. The Motor Accident Claims Tribunal,
   II Court of Small Causes,
   Chennai.

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

R.SURESH KUMAR, J.
and
A.D.MARIA CLETE, J.

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