IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM :

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

C.M.A.No.2577 of 2021
and
C.M.P.No.14759 of 2021

The Divisional Manager,
United India Insurance Co. Ltd.,
Nathaji Road, Manjakuppam,
Cuddalore – 1. ... Appellant

Vs.

1.Mallika
2.Moorthy
3.Murugan
4.Souprayane ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 31.03.2016 made in M.C.O.P.No.826 of 2009 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Cuddalore.

For Appellant : Mr.M.J.Vijayaraaghavan

For Respondents : Mr.R.R.Pradheep [R1 to R4]
Mr.D.Ravichander [R5]

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JUDGEMENT

Questioning the procedure adopted by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Cuddalore in computing the quantum of compensation in M.C.O.P.No.826 of 2009, dated 31.03.2016 as well as on the grounds of negligence and liability, the insurance company has filed the appeal, since the death of the deceased was not due to accident.

2. The facts in brief are as follows :-

The claimants are the wife and sons of the deceased Arumugam. On 05.11.2006 at about 16.30 hours, when the deceased was proceeding in his bi-cycle, a motorcycle bearing Regn.No.PY-01-Y-2516 belonging to the 1st respondent and insured with the 2nd respondent, driven by its driver in a rash and negligent manner at high speed and hit against the cyclist on Thookanampakkam to Kuttiyankuppam road near bridge. As a result of the accident, the deceased sustained grievous injuries i.e., amputed his right thigh in the accident. Immediately after the accident, the deceased was taken to Government Hospital, Pondicherry and in private hospitals and thereafter, he died on 04.05.2007. Hence, the claimants have filed a claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of the deceased before the Tribunal in M.C.O.P.No.826 of 2009.

3. Before the Tribunal, the 1st claimant had examined herself as P.W.1 and marked 9 documents viz., Ex.P.1 to Ex.P.9. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal awarded a sum of Rs.11,98,000/- as compensation in favour of the claimants. Aggrieved by the same, the appellant/Insurance Company has filed the appeal.

4. Learned counsel appearing for appellant/insurance company submitted that, in order to prove that the death of the deceased was due to the injuries sustained by the deceased in the accident, no document was marked before the Tribunal except the wound certificate and discharge sheet and the same were marked as Ex.P.3 and Ex.P.4. He further submitted that, it is seen from the records that the deceased sustained grievous injuries i.e., amputated his right thigh and after taking treatment, he was discharged from hospital on 06.11.2006 and no document is available to prove that the deceased had taken treatment in any other

hospital. In the absence of any proof with regard to the fact that the deceased had died due to accidental injuries, the Tribunal awarded compensation by applying multiplier method is wholly unsustainable. Further, he submitted that the Tribunal ought not to have shifted the burden of proof on the side of the appellant/insurance company on the ground that no contra evidence was adduced against the evidence of P.W.1, since she is not at all an eye-witness to the accident. He further submitted that, the Tribunal had erred in adding 50% towards future prospects and adopting multiplier as 14. Accordingly, he prays for allowing the appeal.

5. Learned counsel appearing for the respondents 1 to 3 submitted that, by considering all the materials, the Tribunal has rightly arrived at a conclusion that the deceased had died due to the accidental injuries and awarded compensation by adopting multiplier method, which is wholly sustainable. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant/insurance company as well as the respondents 1 to 3/claimants and perused the

materials available on record.

7. There is no quarrel that the deceased had suffered the injuries as a result of the accident, in which the vehicle, which has been insured with the appellant/insurance company was involved. The Tribunal, considering the materials placed before it has rightly come to the conclusion that it was due to the rash and negligent driving of the offending vehicle that the accident had happened and therefore, it is the duty of the appellant/insurance company as insurer of the offending vehicle to compensate the respondents 1 to 3/claimants. Therefore, on the point of negligence and liability, no interference is warranted and the finding recorded by the Tribunal is confirmed.

8. Now, the only issue which arises for consideration is whether the death of the deceased in the year 2006 is due to the accident or not. In this regard, this court had perused Ex.P.3 and Ex.P.4 marked by the claimants, which reveals that fracture of shaft of femur and bone grafting done on 21.11.2006. From Ex.P.3/Discharge sheet, it is seen that the deceased had continuously taken treatment from 05.11.2006 to

22.11.2006 and thereafter, frequently visited the hospital for treatment. Further, from Ex.P.4/Wound certificate, it is seen that the injuries sustained by the deceased is grievous in nature. Considering the above documents, the Tribunal had rightly arrived at a conclusion that the deceased had died due to the accidental injuries and awarded compensation by adopting multiplier method, which is wholly sustainable. Therefore, on this point also, no interference is warranted and the finding recorded by the Tribunal is confirmed.

9. Now, coming to the question of quantum of compensation awarded by the Tribunal, it is borne from the award that the Tribunal had fixed the notional income of the deceased at Rs.6,000/-. Considering the fact that the accident had happened in the year 2006 and since no document has been produced before the Tribunal in order to prove the income of the deceased, the Tribunal had rightly fixed the notional income at Rs.6,000/-, which does not require any interference and the same is confirmed. Hence, by fixing the notional income of Rs.6,000/- and adding future prospects at 25%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay***

sethi and others reported in ***2017 (16) Supreme Court Cases 680,*** the total income per month is quantified at Rs.7,500/-. Deducting 1/3rd towards the personal expenses of the deceased, the notional income of the deceased is arrived at Rs.5,000/- per month and the deceased being aged about 45 years, as evidenced from the records, adopting the multiplier of 13 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income to the family is arrived at Rs.5,000/- * 12 * 13 = Rs.7,80,000/-, which is worked out as follows :-

Loss of Income	***Amount in Rs.***
Notional income (Per month)	6,000
Add: Future Prospects (Rs.6,500 x 25%) (Per month)	1,500
	7,500
Less: Personal expenses (1/3rd) (Rs.7,500/- x 1/3rd) (Per month)	2,500
	5,000
Notional income (per annum) (Rs.5,000/- x 12)	60,000
Multiplier	13
Total	**7,80,000**

10. Further, the Tribunal had awarded a sum of Rs.25,000/- towards loss of consortium to the 1st respondent; Rs.10,000/- towards loss of estate; Rs.60,000/- towards loss of love and affection; Rs.25,000/-

towards loss expectation of life; Rs.25,000/- towards funeral expenses; Rs.25,000/- towards pain and suffering; Rs.10,000/- towards transport to hospital and Rs.10,000/- towards pack and embalming charges.

11. Since the deceased had died due to the accidental injuries after a period of 6 months from the date of accident, he would have incurred transport expenses in order to go to hospital for getting treatment, the compensation awarded under the head transport to hospital is confirmed. This Court is of the view that the compensation awarded under the head loss expectation of life is just and reasonable and the same is confirmed.

12. Insofar as the compensation awarded under the heads loss of consortium to the 1st respondent and loss of estate, this court is of the view that the same is on the lower side and hence, the same is enhanced to a sum of Rs.40,000/- and Rs.15,000/- respectively. Further, the compensation awarded under the head funeral expenses is on the higher side and the same is reduced to a sum of Rs.15,000/-. The respondents 2 and 3 are entitled to a sum of Rs.40,000/- each towards loss of love and affection.

13. Insofar as the compensation awarded under the heads pain and suffering and pack and embalming charges, no compensation can be awarded under such heads as the said heads are not conventional head, which attract any compensation. Therefore, the compensation awarded under the said heads are accordingly set aside.

14. In view of the above, the compensation awarded by the Tribunal is modified as under :-

S. No.	***Description***	***Awarded by the Tribunal (Amount in Rs.)***	***Awarded by this Court (Amount in Rs.)***
1	Loss of income	**10,08,000/-**	**7,80,000/- (reduced)**
2	Loss of consortium (1st respondent)	**25,000/-**	**40,000/- (enhanced)**
3	Loss of estate	**10,000/-**	**15,000/- (enhanced)**
4	Loss of love and affection (respondents 2 and 3)	**60,000/-**	**80,000/- (enhanced)**
5	Loss expectation of life	25,000/-	25,000/-
6	Funeral expenses	**25,000/-**	**15,000/- (reduced)**
7	Pain and suffering	25,000/-	--
8	Transport to hospital	10,000/-	10,000/-
9	Pack and embalming	10,000/-	--

S. No.	*Description*	*Awarded by the Tribunal (Amount in Rs.)*	*Awarded by this Court (Amount in Rs.)*
	charges		
	Total	**11,98,000/-**	**9,65,000/-**

15. It appears that, as per the order of interim stay passed by this Court in C.M.P.No.14759 of 2021, dated 17.09.2021, the appellant/insurance company has deposited 50% of the award amount as awarded by the Tribunal before the Tribunal.

16. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the impugned award passed by the Tribunal is modified, reducing the compensation amount from **Rs.11,98,000/-** to **Rs.9,65,000/-**. The appellant/insurance company is directed to deposit the said amount to deposit to the credit of M.C.O.P.No.826 of 2009 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit along with costs as awarded by the Tribunal, less, the amount, already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the respective share of the respondents 1 to

3/claimants directly to the respective bank account of the respondents 1 to 3/claimants as per the apportionment of the Tribunal, through RTGS within a period of two (2) weeks thereafter. It is made clear that the respondents 1 to 3 are not entitled to interest for the default period from 02.12.2011 to 11.10.2013 as ordered by the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

09.01.2025

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

The Motor Accident Claims Tribunal, Chief Judicial Magistrate, Cuddalore.

M.DHANDAPANI, J.

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