IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **18.03.2026**

CORAM:

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR

CMA No. 1669 of 2023

1. V.Devasena

2. S.Vasanth

3. S.Sudharsan ... Appellants/Claimants

Vs

1. M.Devi
W/o. Mani

2. The Manager
New India Assurance Company Ltd.,
252, NSC Bose Road
Chennai – 01. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 for enhancement of the compensation awarded in the Judgment dated 01.06.2023 made in MCOP No. 28 of 2022 on the file of the Ld. Special District Judge/Motor Accident Claims Tribunal No.1, Thiruvallur.

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For Appellants : Mr. N.Manoharan

For 1st Respondent : No appearance

For 2nd Respondent: Mr. T.Rajanandhini
for M/s. C.Ramesh Babu

JUDGMENT

(Order of the Court was made by **K.RAJASEKAR, *J*.**)

This Appeal has been filed by the claimants seeking enhancement of compensation awarded by the Tribunal in M.C.O.P.No. 28 of 2022 by the award dated 01.06.2023.

2. The case of the claimants / appellants is that they are the dependents of the deceased M.Srinivasan, who was died in the road accident took place on 10.07.2021 at about 09.47 pm. According to him, the deceased was riding his motor cycle on the left side of the Tiruvallur to Tiruttani High Road, while reached near, just opposite to Jaua Engineering College, a tempo traveler ambulance bearing registration No. TN-20-CZ-0363 came in the opposite direction crossed the middle of the road and hit on the two wheeler which resulted in causing grievous injuries to the rider. Subsequently, he scuccumed to the injuries. Hence, the appellants have come forward with this claim for compensation of Rs.3/- crores, by

invoking Section 166 of the Motor Vehicles Act 1988.

3. It is also pleaded by them that the deceased was doing business in manufacturing and selling steel and connected materials and he was a good income and he was also an income tax assessee.

4. The claim petition was resisted by the Insurance Company challenging negligence pleaded as well as disputed the quantum of compensation claimed by the claimants herein. The Tribunal after framing necessary points for consideration, as accepted the case of the claimants that the driver of the ambulance was responsible for causing accident and the insurer of the ambulance is liable to pay compensation to the defendants. However, the Tribunal has held that since the deceased in this case was not wearing the helmet. He has also contributed to the accident to extent of 10%. While deciding the quantum, the Tribunal after considering the income tax returns filed prior to the death of the deceased that is for the assessment year 2021-2022 is to be taken for assissing the loss of income and accordingly fixed the loss of income and totally awarded after adding conventional heads as Rs.28,73,329/- and further it is also deducted 10% for contributatory negligence. Aggrieved over the contributory negligence fixed

on the decased and also seeking enhancement of compensation, this Appeal has been filed by the claimants.

5. Heard both sides.

6. The learned counsel for the appellants submits that the deceased filed his income tax return under Section 44AD, 44ADA or 44AE of the Income Tax Return which provides certain benefits to the small time business man and pay tax with some consessional rates and accordingly, he has utilised the opportunity and paid the income tax. Though he is having a high turn over for the purpose of paying the income tax and the same is not reflected in income tax returns. He further submitted the actual income of the turn over, income would be after deduction of 70 – 75% of the turn over. Hence, he prays to fix the income after dedecuting 75% of the turn over and the remainder to be taken as taxable income and fix it as a loss of income. He further submitted that the fixing of 10% of the contributory negligence is also unwarranted and is to modify the same.

7. The learned counsel for the Insurance Company / second respondent submits that there is no valid ground made in this Appeal seeking enhancement of compensation. He further submits that the deceased

was not wearing head gear at the time of accidence. Hence, he has also contributed for hte death and hence he prays for confirming the award.

8. We have carefully considered the arguments advanced and perused the materials available on records.

9. With regard to the allegations of contributory negligence is concerned, admittedly, there is no issue has been framed by the Tribunal in this regard. The Tribunal has framed the issue only to the aspect that whether the driver of the ambulance is acted negligently and the Tribunal has also based on the evidence has accepted the case of the claimants that the negligent act of the driver of the ambulance is the cause for accident. However, the Tribunal has held that the deceased was not wearing head gear and he has also contributed the accident. This finding is unwarranted and without framing of separate issue regarding the contributory negligence holding that the deceased is also contributed the accident is not proper and we are of the view that the same is liable to be set aside.

10. With regard to the quantum of compensation is concerned, though the arguments advanced by the learned counsel for the petitioner by

relying Section 44(D) of the Income Tax Act is some how applicable, there is no basis to fix the income of the petitioner after deducing 70-75% of the total turn over, in other words 30% to 25% of profit from total turnover.

11. We have also gone through the entire records more particularly the evidence recorded by the claimants. There is no material to show that the actual income earned by him is nearly 25% to 30% of total turn over. In the absence of any evidence int his regard, we are not inclined to accept the said contention and admittedly there is an income tax returns placed on record. Though it is stated that for availing the benefits given under the Income Tax Act, the income has been shown on the lower side, there is no material placed on record and the Tribunal has also after considering the evidence of the income tax Officer, who was examined as PW-4 and based on the income tax returns of the assessment year 2021-2022 has fixed the income of the deceased. Since the material produced before the trial Court is the income tax returns and the same carries the income details, the same ought to have been followed in the absence of any other materials or any other evidence to deviate from the income stated in the returns.

12. In view of the same, we are of the view that the award of the

Tribunal is proper and accordingly, we inclined to confirm the loss of income fixed by the Tribunal. Similarly, the conventional heads, the Tribunal has also granted compensation and we find the same is also reasonable and accordingly, we confirm the quantum of compensation fixed by the Tribunal. However, since we set aside the finding regarding the contributory negligence, the claimants are entitled for the total compensation arrived by the Tribunal and the same is as follows:-

Loss of Dependency	Rs.2,50,000/- p.a (add 25% future prospectus) + 2,50,000 + 62,500 + 312,500 Rs.3,12,500/- (1/3rd deductions) = 3,12,500 – 104,167 = 208,333 Rs.2,08,333 x 13 (multiplier) = 27.08.329	27,08,329
Loss of estate	16,500	16,500
Loss of Consortium	44,000 x 3	1,32,000
Funeral expenses	16,500	16,500
	Total	28.73,329

13. In the result, this Appeal is partly allowed. No costs.

14. The second respondent is directed to deposit the compensation amount within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn.

(C.V.K.,J.) (K.R.S.,J.)
18-03-2026

Index:Yes / No
Speaking / Non-Speaking order
vsg

To

Special District Court
Motor Accident Claims Tribunal No.1, Thiruvallur.

C.V.KARTHIKEYAN, J.
And
K.RAJASEKAR, J.

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