



C.M.A.No.3179 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 20.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.M.A.No.3179 of 2021

1.Suganthi

2.Raja

3.Minor Rajakumari

4.Minor Rajalakshmi

5.Minor Rajeshwari

(The minors 3 to 5

are represented by NF/Guardian

Tmt.Suganthi)

6.Alagammal

7.Kuzhandhaivel (died)

...Appellants

vs.

1.Natesan

2.The Divisional Manager,

The National Insurance Company Limited,



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Having Office at
No.19, Officers line,
Vellore.

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 08.03.2019 made in M.A.C.T.O.P.No.60/2018 on the file of the Motor Accidents Claims Tribunal, The Special Sub Court, Thiruvannamalai.

For Appellant : M/s.Subadra
For R2 : Mr.Michael Visuvasam

JUDGMENT

(Judgment of the Court was delivered by
MR.JUSTICE D.KRISHNAKUMAR)

The claimants before the Motor Accident Claims Tribunal, the Special Sub Court, Tiruvannamalai, in M.A.C.T.O.P.No.60 of 2018 are the appellants in this Civil Miscellaneous Appeal.

2. Aggrieved by the insufficiency of the compensation awarded by the Tribunal, the claimants have brought forth the above C.M.A.No.3179 of 2021



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directed against the award dated 08.03.2019 passed by the Motor Accident Claims Tribunal Special Sub Judge, Tiruvannamalai, in M.A.C.T.O.P.No.60 of 2018 directing the 2nd respondent to pay a sum of Rs.18,16,200/- together with interest at the rate of 7.5% per annum from the date of claim, till the date of deposit for the death of one Mr.Pazhamalai who died in a road accident on 04.12.2016 at 1.45 p.m.

3.The facts can be briefly stated as:

The deceased Mr.Pazhamalai was riding his bike Hero Honda Splendor two wheeler bearing Registration No. TN-22-AZ-5443 along with his wife Tmt.Pushpa as his pillion rider, in the extreme left side of the road , in soil pathway near bus stop of Navamaram at Po.Meyyur village in Madampoondi to Thiyagadhurgam road. At the time, the 1st respondent was driving his Lorry bearing Registration No.TN-32-M-9293 from Madampoondi towards Thiyagadhurgam in a very rash and negligent manner without observing road Rules and hit against the aforesaid two wheeler. Both the husband and wife sustained fatal injuries and died on the spot. While M.A.C.T.O.P.No. 61/2018 was filed claiming compensation for the death of Pushpa, Wife, this M.CA.C.T.O.P.No. 60/2018 is filed claiming compensation for the death of Mr.Pazhamalai, Husband.



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4. The deceased/Pazhamalai was aged about 40 years and he was hale and healthy at the time of accident. He was working as a Mason at the time of the accident, through which he earned not less than Rs.20,000/-per month. The 1st respondent is the driver of the offending vehicle and the 2nd respondent is the insurance company. The 2nd respondent is liable to pay the compensation claimed by the claimants. The appellants/claimants being the legal heirs of the deceased, claimed a total compensation of Rs.50,00,000/- from the respondents.

5. In order to prove this case, the 1st Appellant was examined herself as P.W.1 and also examined P.W.2 one Mr..Karunanithi. The claimants have relied upon 4 documents, marked as Ex.P. to P.4. No witness or documents were examined on the side of the respondents.

6. The appellants/Claimants in C.M.A.No.3179 of 2021 preferred the said appeal on the ground that, the Tribunal erred in awarding a sum of Rs.18,16,200/- as against Rs.50,00,000/- as compensation. The Tribunal failed to consider the age, occupation and income of the deceased. The deceased at the time of the accident earned about Rs.20,000/- per month whereas the Tribunal fixed a meagre sum of



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Rs.7000/- per month and that the tribunal ought not to have deducted the income of the deceased towards personal expenses, as the appellants were depending upon the earnings of the deceased since 3rd to 5th Appellants were minor children. It was also submitted that the tribunal ought to have awarded more compensation on the head of loss of income, future prospects, funeral expenses, loss of estate, loss of love and affection, loss of expectation of life, transportation, damages and mental agony. Hence, prays for setting aside the award passed by the Tribunal by enhancing the award of compensation.

7. Heard both sides. Records perused.

8. The respondent denies the time and place of the accident and states that the Motor cycle bearing registration No.22-AZ-5443 was not insured and that the rider (deceased Mr.Pazhamalai) did not have a valid driving license at the time of the accident. He further denies the allegations that the deceased died on the spot and puts the petitioners to strict proof of the same along with the averments made in the claim with regard to the age/occupation, income, state of health, nature of death and manner of accident. The learned counsel for respondent strongly objects that the



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claimants have not produced any supporting document to prove the income of the deceased Pazhamalai, except the statement of PW1.

9. The Tribunal, after considering the oral evidences of P.W.1 and P.W.2 and EX.P.1-copy of FIR concluded that the accident had occurred due to the rash and negligent driving of the 1st respondent's vehicle bearing Reg No.TN-32-M-9293. The eyewitness P.W.2 has clearly deposed about the accident and there is no rebuttable evidence to disbelieve the version of PW.2. No contributory negligence can be attributed on the part of the deceased. The 2nd respondent, being the Insurer of the first respondent's vehicle, puts forth the contention saying that the accident took place due to the negligence of the rider of the Motor Cycle namely the deceased but no evidence or proof was submitted on their side and therefore, it was not accepted. Therefore, the findings of the Tribunal on the question of negligence do not warrant any interference.

10. In C.M.A.No.3179 of 2021 the claimants are aggrieved by the insufficient compensation awarded by the Tribunal. The learned counsel appearing for the claimants would contend that the deceased at the time of the accident was 40 years



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old and was working as a Mason and earned about Rs.20,000/- per month. However, the Tribunal, without considering this, fixed the income at Rs.7000/- and added a sum of only Rs.2800/- towards 40% future prospects. The further contention is that the tribunal ought have to awarded more compensation on the head of loss of income, future prospects, funeral expenses, loss of estate, loss of love and affection, loss of expectation of life, transportation, damages and mental agony.

11. According to the claimants, the deceased was working as a Mason and was earning Rs.20,000/- for which there is no proof except for the deposition of the daughter. Therefore the claim before the Tribunal for an amount of Rs.50,00,000/- is excessive. The Tribunal has fixed the monthly income of the deceased at Rs.7,000/- which can be enhanced to Rs.12,000/- considering the year of the accident. The Tribunal has awarded Rs.40,000/- to claimants 1 & 2 each and Rs.75,000/- to claimants 3 to 5 and Rs.35,000/- to Claimants 6 & 7 each towards love and affection. We are of the view that it would be appropriate to grant Rs.40,000/- each for claimants 1 to 7. Accordingly, the compensation under the head loss of love and affection is reduced to Rs.2,80,000/-. Applying the principles laid down in ***Sarla Varma vs. Delhi Transport Corporation*** the multiplier '15' for the deceased who was 40 years at the time of the accident and deducted 1/5th of the income towards



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personal expense of the deceased. Further, as per the decision in *National Insurance*

Company vs. Pranaisethi and others future prospects is considered at the rate of 40% is proper. Therefore, the total monthly income of the deceased including future prospects comes to Rs.16,800/-[12,000+4,800](12,000x40%). The dependents of the deceased are four members. Hence, 1/5th of the deduction is made towards the personal expenses of the deceased. Accordingly, the monthly income of the deceased is arrived at Rs.13,440/-(16,800-1/5) and after applying multiplier '15', the loss of income of the deceased is calculated at Rs.24,19,200(13,440x12x15). As discussed above, the compensation awarded under the head loss of love and affection is reduced to Rs.2,80,000/- =[40,000 x 7] and the compensation awarded by the Tribunal in all other heads stands confirmed. Therefore, the claimants are entitled for compensation under various heads as follows:

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Award confirmed or enhanced or granted</i>
1	Loss of Income	14,11,200/-	24,19,200/-	Enhanced
2	Loss of love and affection	3,75,000/-	2,80,000	Reduced
4	Loss Of Estate	15,000/-	15,000/-	Confirmed
5	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total	18,16,200/-	27,29,200/-	Enhanced by Rs.9,13,000/-



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12. In the result, this Civil Miscellaneous Appeal No.3179 of 2021 is partly allowed and the compensation awarded by the Tribunal is hereby enhanced from Rs.18,16,200/- to Rs.27,29,200/- together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit.

13. The Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are entitled to withdraw their respective share as per the apportionment granted by the Tribunal. As far as the 3 to 5 claimants/minors are concerned, the amount apportioned to the share of the minors shall be deposited in any one of the Nationalized bank at Villupuram District, under the auto renewal clause, till they attain majority as per the ratio of apportionment ordered by the Tribunal, through NEFT/RTGS within a period of 12 weeks from the date of receipt of a copy of this order. The 1st petitioner being the sister of the minors is permitted to withdraw the accrued interest once in six months for the benefit of the minor and utilize the same for the benefit of the minors. The claimants/appellants



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are directed to pay the additional Court fee for the enhanced compensation awarded by this Court. There shall be no order as to costs.

(D.K.K.J) (K.G.T.,J.)

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vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

To:-

The Motor Accident Claims Tribunal,
Special Sub Court, Thiruvannamalai.



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D.KRISHNAKUMAR, J.
and



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