



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2019

CORAM:

THE HONOURABLE **MR.JUSTICE KRISHNAN RAMASAMY**

C.M.A. (MD)No.566 of 2019

WEB COPY

1.S.Vasanthakumari

2.S.Sathish

3.S.Saravanan

: Appellants/Petitioners

Vs.

1.S.Natarajan

2.The Divisional Manager,
The United India Insurance Co.Ltd.,
Having its Office at
LIC Building, Gandhiji Road,
Thanjavur.

: Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 28.03.2019 in M.C.O.P.No.586 of 2018 on the file of the Motor Accident Claim Tribunal/Special District Court, Thanjavur so far as they related to the quantum of compensation granted.

For Appellants : Mr.N.Tamilmani

For R2 : Mr.A.Shajahan

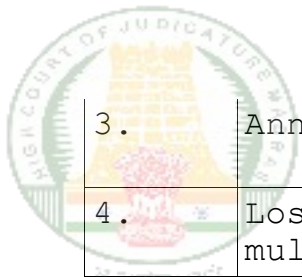
For R1 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the award, dated 28.03.2019 passed in M.C.O.P.No.586 of 2018 on the file of the Motor Accident Claim Tribunal/Special District Court, Thanjavur. The appellants challenged only quantum of compensation fixed by the Court below.

2.The Court below fixed the compensation as follows:

S.No.	Under the Head	Calculation
1.	Monthly Income	Rs.17621/-
2.	Deduction of 1/3 rd for his personal expenses	Rs.17621(-)5874= Rs.11747/-

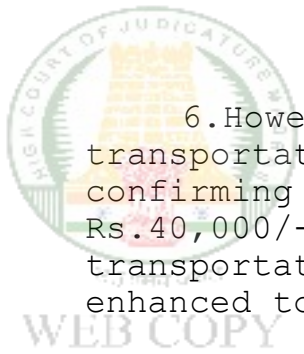


3.	Annual Income	Rs.11747*12= Rs.140964/-
4.	Loss of income after applying multiplier 16	Rs.140964*5= Rs.704820/-
5.	Funeral expenses	Rs.15,000/-
6.	For loss of Estate	Rs.15,000/-
7.	Loss of consortium to the 1 st petitioner	Rs.40,000/-
8.	Total Compensation amount	Rs.7,74,820/-
	Less: 10% for contributory negligence	Rs. 77,482/-
	Amount entitled to the petitioners	Rs.6,97,338/-

3.On 18.03.2018, at 9.15 p.m., when the deceased Singaravelu along with his wife as pillion rider was driving in a Honda Activa bearing Regn. No.TN 49 BH 0426, from LIC Lorry, in order to go to his sister's house and when they were coming near LIC Colony main road towards MC Road, by keeping left side of the road towards east to western direction with slow speed, at that time, an Auto, bearing Regn No.TN 49 AH 1353, being driven by its driver in a rash and negligent manner, came from the opposite direction and dashed against the deceased and thus caused the accident. In the said accident, the said Singaravelu died and his wife, who came as a pillion rider sustained injuries.

4.The learned counsel for the appellants submitted that the deceased was a partner in Deepam Xerox and also working as Manager in Ragam Color Lab and the Court below fixed the annual income of the deceased is Rs.1,40,964/-. The learned appellant further contended that she has filed income tax return to prove additional income, however, the learned counsel for the respondent strongly opposed by stating that the income tax return was filed only for the purpose of filing the present claim petition, after the death of the deceased. When the deceased was alive, he had not filed any income tax return. Present income tax return was filed so as to claim more compensation from the insurance company, and therefore, the same cannot be relied on.

5.Further, the appellant has not filed any document to prove the income of the deceased. This Court is of the view that in the absence of any additional document, the court below has rightly fixed the income of the deceased and there is no infirmity in the order passed by the Court below, while fixation of the income of the deceased.



6.However, the Court below awarded nothing towards transportation and love and affection. Therefore, this Court while confirming the award passed by the Court below, awards Rs.40,000/- towards love and affection and Rs.10,000/- towards transportation. Therefore, the award of the tribunal stands enhanced to the tune of Rs.7,47,338/-.

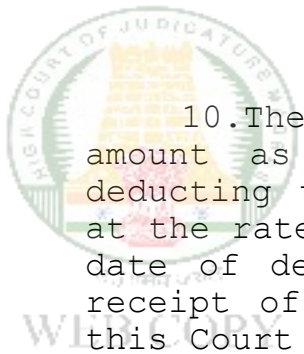
7.Therefore, the compensation awarded by the tribunal is revised and the claimants are entitled to get a sum of Rs.7,47,338/-. This Court directs the Insurance Company to deposit the said amount, within a period of eight weeks from the date of receipt of a copy of this order and once the deposit is made, the Court below is directed to transfer the said amount to the account of the claimants, within three weeks from the date of deposit.

8.It is further seen from the award that the Tribunal has fixed 10% contributory negligence against the deceased, the rider of the two-wheeler, since the deceased drove the vehicle without any valid licence. However, this Court is of the view that whether the deceased was holding valid licence or not was not proved before the Tribunal and in such case, 10% of liability fixed towards contributory negligence as against the deceased is not proper. Further, this Court would like to point out that the issue with regard to the contributory negligence would arise, only if the negligence is proved on both the vehicles, involved in the accident viz. deceased's vehicle and the opponent's vehicle. In the present case, the driver of the Auto drove the vehicle in a rash and negligent manner, and further, the Tribunal held that the accident occurred only due to the rash and negligent driving of the driver of the Auto. When such be the case, the Tribunal ought not to have fixed 10% contributory negligence on the deceased, rider of the two-wheeler. If the deceased drove the vehicle without possessing any valid license, it is for the traffic police to take action and file case against him. Therefore, this Court is of the view that contributory negligence fixed by the Tribunal against the rider of the deceased two-wheeler is not proper. Hence, this Court set aside the award passed to the extent fixing 10% contributory negligence against the rider of the deceased two-wheeler. Consequently, the Insurance Company is directed to deposit 100% of the award passed by the Tribunal.

9.Therefore, the amount awarded by the Tribunal at Rs.6,97,338/- is enhanced to Rs.Rs.7,47,338/-. The said compensation shall be shared by the claimants herein in the following manner :-

i)The wife of the deceased is entitled to Rs.4,47,000/- along with interest.

ii)The claimants 2 and 3, are each entitled to a sum of Rs.1,50,169/-.



10.The Insurance Company is directed to deposit the entire amount as determined by this Court, viz., Rs.7,47,338/- after deducting the amount already deposited if any, along with interest at the rate of 7.5% per annum from the date of the accident till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, this Court directs the Tribunal to transfer the entire amount to the claimants by way of RTGS in the proportion as determined by this Court to their respective bank accounts within a period of three weeks thereon. If the Insurance Company already deposited the said amount, the Tribunal is directed to transfer the award amount along with interest by way of RTGS to the respective accounts of the claimants directly within three weeks from the date of receipt of a copy of this judgment.

11.With the above modifications, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

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To

The Motor Accident Claim Tribunal/Special District Court,
Thanjavur.

Copy to:

The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.(2 COPIES)

+1 CC to M/s.A.SHAJAHAN, Advocate (SR-92396[F] dated 17/10/2019)

+1 CC to M/s.N.TAMILMANI, Advocate (SR-92632[F] dated 17/10/2019)

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KK/SAR/12.02.2020/4P-6C/