



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 23.07.2021

Delivered On : 09.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.822 of 2018

WEB COPY

1.K.Banupriya

2.Minor Mahant

(Minor Mahant represented by
his mother and natural guardian
K.Banupriya, 1st Appellant)

3.B.Vasanthi

K.Balan (Died)

4.B.Nagarani

..Appellants/Petitioners

Vs.

1.A.Usharani

2.The Branch Manager,

The Oriental Insurance Co. Ltd.,
11/12/30, D.S.P. Complex,
Karur Main Road,
EC. Velayuthampalayam,
Karur.

.. Respondents/Respondents

(first respondent set exparte before the
Tribunal. Hence, the first respondent
may be dispensed with.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to modify the award passed in M.C.O.P.No.188 of 2013 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Karur dated 21.07.2016.

For Appellant : Mr.N.Sudhagar Nagaraj

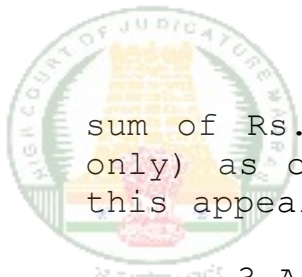
For 1st Respondent : Mr.B.Ramanathan

For 2nd Respondent : Mr.C.Jawahar Ravindran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.188 of 2013 dated 21.07.2016, on the file of the Motor Accident Claims Tribunal/Principal District Judge, Karur.

2.The appellants herein are the claimants and the respondents herein are the respondents in the claim petition. The appellants have filed a claim petition in M.C.O.P.No.188 of 2013, claiming compensation for the death of Kishore Kumar, in an accident that took place on 04.09.2012. The Tribunal has awarded a



sum of Rs.9,34,000/- (Rupees Nine Lakhs and Thirty Four Thousand only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.188 of 2013 is as follows:

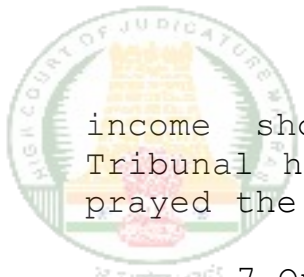
On 04.09.2012, the deceased Kishore kumar was riding a motorcycle bearing registration No.TN-47-AA-1217 and another deceased Sathiyamoorthy was travelling as the pillion rider. At about 04.00 p.m., a Ford car bearing registration No.TN-45-AP-7621 was driven by its driver in a rash and negligent manner dashed against the two wheeler from the backside and both the deceased sustained grievous injuries and died on the spot. The claimants are the legal heirs of deceased Kishore kumar. The deceased was aged about 32 years at the time of accident and he was supplying generator for hire and he was earning Rs.30,000/- per month. The claimants claimed a sum of Rs.40,00,000/- as compensation.

4.A brief substance of the counter filed by the second respondent therein is as follows:

The rider of the two wheeler drove the vehicle in a rash and negligent manner and attempted to overtake a lorry and he has invited the accident. The deceased was responsible for the accident. The driver of the Ford car was not having valid driving licence. The deceased was not in possession of a valid driving licence to drive the motorcycle. The validity of driving licence of the deceased expired on 27.09.2011. The age, status, occupation of the deceased is denied. The claim is excessive.

5.On the side of the claimant, five witnesses were examined and 17 documents were marked. On the side of the respondents therein, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.9,34,000/- (Rupees Nine Lakhs and Thirty Four Thousand only) as compensation. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that at the time of accident, the deceased was only 30 years old. His wife, minor son, mother of the deceased were the dependants. The Tribunal failed to consider the income tax returns and failed to award future prospects and the award granted by the Tribunal under various other heads is very low. It is wrong on the part of the Tribunal to fix the income, as if the deceased was a coolie, whereas the deceased was a businessman filing income tax returns from the year 2010 till 2014. The Income Tax Inspector was examined as P.W.5. The income tax returns reveals that the income of the deceased during the year 2012 - 2013 is Rs.1,54,500/- (Rupees One Lakh Fifty Four Thousand and Five Hundred only). The



income should be raised 50 % towards future prospects. The Tribunal has failed to award compensation for loss of estate and prayed the amount to be enhanced.

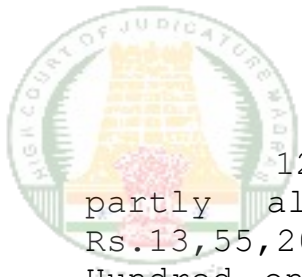
7. On the side of the respondents, it is stated that there was no document to show that the deceased was having a business. Mere marking of the bills for purchase of the generator cannot be taken as proof of business. No copy of R.C. was marked. No rental agreement was marked. There is no substantial document to support the IT return. The IT returns are filed for loan purpose. They are not sufficient to prove the income. The age of the deceased is 32 years and his date of birth is 31.03.1981 and the accident took place on 04.09.2012. But the Tribunal is wrong in fixing the age of the deceased as 30 years. $\frac{1}{3}^{\text{rd}}$ of the income has to be deducted instead of $\frac{1}{4}^{\text{th}}$ of the income as deducted by the Tribunal.

8. The fourth claimant is the father of the deceased. Though the father of the deceased is not a first class legal heir, he may be a dependant. In the above circumstances, deducting $\frac{1}{4}^{\text{th}}$ income the deceased is reasonable.

9. The claimants have filed Ex.P12 to Ex.P14, Ex.P16 and Ex.P17 to prove the income. As per the IT returns filed by the deceased for the year 2012-2013, the income of the deceased is Rs.1,57,000/- (Rupees One Lakh and Fifty Seven Thousand only). No other documents regarding the ownership of the generators, R.C. for running the business were produced on the side of the claimant. There was no supporting documents to prove the IT returns. IT returns were marked through P.W.5, the Officer from the IT department. But the income from a business is not constant and as such, IT returns cannot be a conclusive proof for fixing the income. The Tribunal has fixed the monthly income as Rs.6,000/- (Rupees Six Thousand only). The Tribunal failed to consider the future prospects. Including 40% future prospects, a sum of Rs.8,400/- (Rupees Eight Thousand and Four Hundred only) is taken for consideration to fix the loss of income. The age of deceased as claimed by the claimant is 32 years and hence, multiplier '17' is to be applied. After deducting $\frac{1}{4}^{\text{th}}$ towards personal expenses, the loss of income is fixed as Rs.12,85,200/-.

10. On the side of the appellant, it is stated that the compensation granted for loss of consortium, loss of love and affection and funeral expenses are to be enhanced.

11. As per **Praney Sethi** case, the compensation towards loss of consortium, loss of love and affection and funeral expenses is fixed as Rs.70,000/-. The total compensation is fixed as Rs.13,55,200/- (Rupees Thirteen Lakhs Fifty Five Thousand and Two



12.In the result, this Civil Miscellenaous Appeal is partly allowed. The appellant is entitled to a sum of Rs.13,55,200/- (Rupees Thirteen Lakhs Fifty Five Thousand and Two Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

13.The respondents are directed to deposit Rs.13,55,200/- (Rupees Thirteen Lakhs Fifty Five Thousand and Two Hundred only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the appellants are permitted to withdraw the award amount as per the ratio fixed by the Tribunal with proportionate interest after deducting any amount received by him earlier. The appellants are entitled for share in the amount as per the ration of apportionment fixed by the Tribunal. Excess amount, if any deposited shall be refunded to the respondents. The claimant is not entitled for interest for the default period, if there is any. No Costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

Mrn

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Motor Accidents Claims Tribunal, Principal District Judge, Karur.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

C.M.A. (MD)No.822 of 2018

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<https://hcservices.ecourts.gov.in/hcservices/>