



C.M.A(MD)No.275 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.07.2022

Pronounced on : 25.08.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.275 of 2012

1.S.Dharmalingam

2.D.Indhirani

... Appellants / Claimants

Vs.

1.Gurusamy

2.The Branch Manager

New India Assurance Company Ltd.,
Kovilpatti Taluk, Door No.913, Catholic Centre, Main Road),
Tuticorin District.

3.M.Yoganathan

4.The Branch Manager,

New India Assurance Company Ltd.,
Vasuki Building,
Thiruvannamalai Taluk,
Thiruvannamalai District.

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow this appeal, set aside the judgment and award passed in M.A.C.O.P.No.194 of 2007 dated 16.08.2011 on the file of the Motor Accidental Claims Tribunal cum Subordinate Judge Court, Sankarankovil.



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For Appellant : Mr.P.Subbaraj
For R1 : Mr.S.Ramasamy
For R2 : Mr.J.S.Murali
For R3 & R4 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order in M.C.O.P.No.194 of 2007 dated 16.08.2011 on the file of the Motor Accidental Claims Tribunal cum Subordinate Judge Court, Sankarankovil. The appellants herein are the claimants. Respondents herein are the respondents in the claim petition.

2.Brief substance of the claim petition is as follows:

On 16.08.2006, at about 4.30 pm., when the deceased travelled in a lorry bearing registration number KA 01 A 5693 as a spare driver, the driver of the lorry drove the vehicle in a rash and negligent manner along the Vasudevanallur to Madurai Road and tried to over take another lorry bearing registration number TN 67 X 3357, dashed against the lorry on the right rear side. Due to that impact, the deceased who was sitting on the left side of the cabin fell down and died on the spot. The deceased was earning Rs.6,000/-



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per month. The petitioners are his dependants and pray a sum of Rs.10,00,000/- as compensation.

3.Brief substance of the counter filed on the side of the second and fourth respondent is as follows:

The petitioners have to prove that the vehicle was insured with these respondents. The lorry bearing registration number KA 01 A 5693 was driven by its driver in a careful and cautious manner. The third respondent vehicle was going in front of the vehicle. All of a sudden, a cyclist crossed the road and when the first respondent driver applied sudden brake, the accident has taken place. The petitioners have to prove that they are the dependants of the deceased. The claim is excessive.

4.One witness was examined and fourteen documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.3,50,000/- as compensation.



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5. Against the award, the claimants preferred this appeal for enhancement of compensation on the following grounds:

The Tribunal is wrong in adopting multiplier 13 without considering the age of the deceased. At the time of accident, the age of the deceased was 21 years and multiplier 18 has to be applied. At the time of accident, the deceased has completed higher secondary course and was working as a driver for the past three years and he was getting a monthly salary of Rs.6,000/-. The salary certificate was marked as Ex.A14. The employment card of the deceased was marked as Ex.A10, wherein the deceased was mentioned as a driver. Without considering all these documents, the Tribunal fixed the monthly income as Rs.3,000/- which is very low.

6. On the side of the appellants, it is stated that the age of the deceased was 21 years. Multiplier 18 has to be adopted. The deceased was a driver and the employment card reveals the same. He was earning a salary of Rs.6,000/- per month. Salary certificate was marked as Ex.A14. The Tribunal failed to consider the above points and fixed the monthly income as Rs.3,000/- which is very low.



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7. On the side of the respondent, it is stated that the Tribunal has fixed the notional monthly income as Rs.3,000/-. The salary certificate was not proved through examination of any witnesses. The employer of the deceased was not examined and the award fixed by the Tribunal is reasonable. The accident has happened in the year 2007. Considering the employment card, wherein the deceased was mentioned as a driver, the notional income fixed by the Tribunal is not reasonable. Hence, the notional income is fixed as Rs. 4,500/- per month.

8. On the side of the petitioner, it is stated that the age of the deceased was 21 years and multiplier 18 has to be adopted. On the side of the respondent it is stated that the deceased was a bachelor and the compensation has to be awarded on the basis of the age of the mother. The age of the mother of the deceased is 46 years and hence multiplier 13 is reasonable.

9. Considering the decision made by the Hon'ble Supreme Court reported in **2019(1) TNMAC 54(DB)** in the case of **Andal and others Vs. Avinav Kannan and another**, it is held that the age of the deceased has to be taken into account for fixing compensation. Hence, it is decided that multiplier 18 is to be applied.



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10.The deceased died as a bachelor. The notional income fixed is Rs. 4,500/- per month. After deducting 50% towards monthly income, the deceased might have contributed Rs.2,250/- to his family members. By applying multiplier 18 the claimants are entitled to (2250 x 12 x 18) Rs. 4,86,000/- towards loss of income. The petitioners are entitled to Rs.40,000/- towards loss of love and affection. The claimants are entitled to Rs.5,000/- towards transport expenses and Rs.5,000/- towards funeral expenses. In total, the claimants are entitled to Rs.5,36,000/- as compensation.

11.The Civil Miscellaneous Appeal is allowed in part. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced to **Rs.5,36,000/-(Rupees Five Lakhs Thirty Six Thousand only)** from Rs.3,50,000/- which shall carry interest at the rate of 7.5% per annum.

(ii) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iii) The Second respondent / Insurance company, is directed to deposit the entire compensation of Rs.5,36,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till



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the date of deposit and with costs to the credit of M.C.O.P.No.194 of 2007 on the file of the Motor Accident Claim Tribunal cum Subordinate Judge Court, Sankarankovil, within a period of eight weeks from the date of receipt of a copy of this order, less any amount already deposited.

(iv) On such deposit being made by the second respondent, the second appellant who is the mother and the first Class-II heir is entitled to Rs.3,36,000/-(Rupees Three Lakhs Thirty Six Thousand only) and the first appellant-father is entitled to Rs,2,00,000/- (Rupees Two Lakhs only) with interest and cost less any amount already withdrawn by them. The appellants are not entitled to interest for the default period if there was default.

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Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accidental Claims Tribunal cum Subordinate Judge Court,
Sankarankovil.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

**Pre - Delivery Judgment made in
C.M.A(MD)No.275 of 2012**

25.08.2022