



C.M.A.(MD)No.263 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 09.11.2022

Delivered On : 30.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.263 of 2013

1.G.Vasuki

2.S.Sai Venkatesh

3.S.Tanuja

(A3 declared as major & guardianship

of her mother(A1) is discharged, vide

Court order, dated 16.02.2021, in

CMP(MD)No.11112&11113/2019) ... Appellants /Petitioners

Vs.

1.P.Anandan

2.M/s.Shriram General Insurance

Company Ltd., Contonment,

Trichy District.

... Respondent / Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award, made in M.C.O.P.No. 2319 of 2009, dated 02.08.2012, on the file of the II Additional District Judge, Trichirappalli.

For Appellants

: Mr.N.Tamil Mani

For Respondents

: Mr.S.Srinivasa Raghavan for R2

: No appearance for R1



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, made in M.C.O.P.No. 2319 of 2009, dated 02.08.2012, on the file of the II Additional District Judge, Trichirappalli. The appellants herein are the claimants and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. A brief substance of the claim petition, in M.C.O.P.No. 2319 of 2009, is as follows:

On 09.07.2009, when the deceased -Saidas was proceeding in his motorcycle bearing Registration No.TN-45-B-8082 in a normal speed along the Madras-Trichy main road, near SRM Petrol bulk, a lorry bearing Registration No.TN-57-C-0639 came in a rash and negligent manner from the same direction and dashed against the motorcycle. The deceased sustained head injury and he died on the spot. The deceased was aged about 56 years and was working as a Government Doctor and was earning Rs.50,000/- pm. as salary, and that he was running a private clinic and he was earning Rs.50,000/- per month. The petitioners are his dependants and they claimed a sum of Rs.40,00,000/- as compensation.



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3.A Brief substance of the counter filed by the second respondent, in M.C.O.P.No. 2319 of 2009, is as follows:

Two vehicles involved in the accident. The petitioners failed to implead the owner and the insurer of the two wheeler. The petition is bad for non-joinder of necessary parties. The bike was not rode worthy at the time of accident. The deceased was not in possession of valid driving licence. He drove the vehicle on the middle of the road in a rash and negligent manner and invited the accident. The age, occupation and income of the deceased are all denied. Being a Government servant, the deceased was not permitted to do private practice. The petitioners have not filed any income tax returns. The claim is excessive.

5. 6 witnesses were examined and 12 documents were marked, on the side of the claimants. 1 witness were examined and 1 document was marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.24,19,200/- as compensation.

6. aggrieved by the order, the claimants / appellants have filed this appeal, for enhancement of compensation, on the following grounds:-



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The Tribunal failed to fix the proper multiplier in calculating the loss of income. The Tribunal ought to have applied multiplier '11', instead of '8'. The Tribunal has got power to award more amount than that was claimed by the claimants. The Tribunal failed to consider Ex.P10 and Ex.P11 and wrongly fixed a low amount, towards loss of income. The Tribunal ought to have awarded enhanced amount for loss of consortium and loss of love and affection. The Tribunal failed to consider the income derived by the deceased from running a private clinic.

7. Additional grounds of appeal raised in CMP(MD)No.8935 of 2022 is as follows:-

The Tribunal failed to consider that the deceased was a Doctor in E.S.I service and that he was running a private clinic. The monthly income, loss of income is to be enhanced accordingly. For the age of the deceased, multiplier '11' is applicable and that the Tribunal is wrong in applying multiplier '8'. Even without filing a cross appeal, the Court can grant more compensation, than that was claimed for. The income under the other conventional heads are to be enhanced.



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8. On the basis of the evidence of P.W.1 and on the basis of Ex. P.1, it is decided that the accident has happened due to the rash and negligent driving of the lorry driver.

9. On the side of the appellants, it is stated that only the salary certificate as a Government servant was taken into consideration by the Tribunal. The Tribunal failed to consider the income from the private clinic. The Tribunal failed to consider that for issuing disability certificate and for issuing medical certificates, the Doctor used to get some more income.

10. On the side of the second respondent / Insurance Company, it is stated that the income from the private practice may not be a fixed one and that income cannot be calculated. It is fairly admitted that the Tribunal failed to calculate the future prospects in calculating the loss of income.

11. Ex.P8 was the copy of the rent agreement deed between the deceased and the landlord -Vasudhevan. The deceased was attached with the Postal Department. Ex.P10 and Ex.P11 were the letters from the



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Superintendent of Post Office, Srirangam. Ex.P12 was the sanction order, disbursing the salary of the deceased. From Ex.P8, Ex.P10 to Ex.P.12, it is clear that the deceased was having income from other sources.

12. Ex.P4 and P7 were the salary certificate of the deceased. From the salary certificates, the Tribunal has fixed the monthly income as Rs.29,180/-. This amount is monthly income received by the deceased as a Government Doctor. Ex.P10 and Ex.P11 are documents to show that the deceased was attached to postal department and he rendered service as medical examiner and he used to receive approximately a sum of Rs.8,000/- per month as income. Ex.P8 was the rental agreement deed, which clearly reveals that the deceased was running a private clinic. There is a possibility of income from the private clinic also. In the above circumstances, the income through the private clinic is fixed as Rs.12,820/-.

13. The Tribunal has come to a wrong conclusion that the Government Doctors are not allowed to do private practice. After considering the private practice and the Government salary at that time, the salary is fixed as Rs.50,000/- per month.



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14. For the income as a Government Doctor, the future prospects is calculated as 15%, that is Rs.4,377/- ($\text{Rs.29,180/-} \times 40/100 = \text{Rs.4,377/-}$), including the future prospects, the monthly salary as a Government Doctor is fixed as Rs.33,557/- ($\text{Rs.29,180/-} + \text{Rs.4,377/-} = \text{Rs.33,557/-}$).

15. The income as the medical examiner for the postal department and as a Doctor running a private clinic, the monthly income is calculated as Rs.20,820/-. For this amount, 10% future prospects has to be added, that is, Rs.2,082/- and the monthly income is calculated as Rs.22,902/- ($\text{Rs.20,820/-} + \text{Rs.2,082/-} = \text{Rs.22,902/-}$). In total the deceased might have earned Rs.56,459/- ($\text{Rs.33,557/-} + \text{Rs.22,902/-} = \text{Rs.56,459/-}$) as monthly income and the same is rounded off to Rs.56,400/-. After deducting 1/3rd of the income towards the personal expenses of the deceased the deceased might have contributed Rs.37,640/- to his family members.

16. From post mortem report, the Tribunal has fixed the age of the deceased as 55 years. Even in the claim petition, the claimants have mentioned the age of the deceased as 56 years. No document was filed to



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prove the age of the deceased. Hence, the admitted age (56 years) is to be taken into consideration. For the age of 56 years, multiplier '9' is applicable. By applying multiplier '9', the loss of income is calculated as Rs. 40,65,120/- (Rs.37,640/-X12X9 =Rs.40,65,120/-).

17. The Tribunal has awarded Rs.5,00,000/- towards loss of expectation of life and the same is reduced to Rs.2,00,000/-. The Tribunal awarded Rs.25,000/- towards loss of consortium, Rs.25,000/- towards loss of love and affection, Rs.5,000/- towards funeral and transport expenses, which are all reasonable.

18. The total compensation is calculated as follows:-

Loss of income	:	Rs.40,65,120/-
loss of expectation of life	:	Rs. 2,00,000/-
Loss of consortium	:	Rs. 25,000/-
Loss of love and affection	:	Rs. 25,000/-
Transportation and funeral expenses	:	Rs. 5,000/-
Total compensation	:	Rs.43,20,120/-



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19. This Appeal is allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.24,19,200/- to Rs.43,20,120/-.

(ii) The second respondent herein – Insurance Company, is directed to deposit the entire compensation of Rs.43,20,120/-(less the amount if already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) The first appellant /wife of the deceased is entitled to a share of Rs.23,20,120/- with proportionate interest and costs. The second appellant herein / son and the third appellant herein / daughter of the deceased are entitled to a share of Rs.10,00,000/- each with proportionate interest.

(iv) On such deposit being made by the second respondent herein/ Insurance Company, the appellants herein/ claimants are permitted to withdraw their share amount as apportioned by this Court with proportionate interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The claimants



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are not entitled for interest for the default period, if there is any.

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(v) 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.

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Index : Yes/No

Internet : Yes/No

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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.



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- To
- 1.The II Additional District Judge,
Trichirappalli.
 - 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.263 of 2013

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