



C.M.A(MD)No.499 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.08.2022

Pronounced on : 15.09.2022

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

C.M.A(MD)No.499 of 2022

1.Mookaiya

2.Muthulakshmi

3.Marimuthu

... Appellants / Claimants

Vs

1.Shanmugam

2.The Branch Manager,
National Insurance Company Limited,
Salem District.

... Respondents/ Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to enhance the award amount by allowing the Civil Miscellaneous Appeal against the order dated 21.02.2022 in M.C.O.P.No.394 of 2019 on the file of the Motor Accident Claims Tribunal (Special Court for E.C & NDPS Act Cases), Pudukkottai.

For Appellant : Mr.P.Ganapathi Subramanian

For R1 : No appearance

For R2 : M/s.P.Malini



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JUDGMENT

This appeal is filed against the order made in M.C.O.P.No.394 of 2019 on the file of the Motor Accident Claims Tribunal(Special Court for E.C., and NDPS Act Cases), Pudukkottai, dated 21.02.2022. The appellants herein are the claimants. The respondents are the respondents in the claim petition.

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

On 28.05.2019, while the deceased Adaikkalam was riding his two wheeler bearing registration number TN 29 L 2079 along the Trichi-Pudukkottai main road, a lorry bearing registration number TN 25 AB 6363, came from the opposite direction in a rash and negligent manner, dashed against the two wheeler. The deceased sustained head injury and died on the spot. The deceased was aged about 23 years, working as a tea master and earning Rs.15,000/- per month. The claimants are his dependents and they claim a sum of Rs.30,00,000/ as compensation.

3.Brief substance of the counter filed by the second respondent is as follows:



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The age, occupation and income of the deceased are all denied. The claimants have to prove that they are the dependants of the deceased. The manner of accident as narrated in the petition is wrong. It was the deceased who was riding the two wheeler, drove the vehicle in a rash and negligent manner and dashed against the lorry. Atleast, the deceased is liable for 50% of contributory negligence. The owner and insurer of the two wheeler are also necessary party to the case. The two wheeler had no valid registration certificate, fitness certificate or permit. The rider was not having valid driving license at the time of accident. The compensation claimed is excessive.

4.Three witnesses were examined and eight documents were marked on the side of the claimants. One witness was examined and one document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.9,77,200/- as compensation.

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



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The Tribunal failed to appreciate the oral and documentary evidence in a proper perspective. The Tribunal failed to consider the evidence of P.W.3 in fixing the monthly income. The accident took place in the year 2019 and the notional income fixed by the Hon'ble Supreme Court at the time of accident is Rs.9,000/-. Considering the inflation and cost index, the Tribunal ought to have fixed the monthly income as Rs.15,000/- per month. The second respondent failed to establish that P.W.3 was not a owner of a tea stall. The Tribunal failed to award loss of consortium for the second appellant. The Tribunal failed to consider that there shall be an increase of 15% in the conventional head. The Tribunal ought to have awarded Rs.50,000/- to the third petitioner towards loss of love and affection.

6.On the side of the appellant, it is stated that the deceased was working in the shop run by P.W.3. P.W.3 deposed that he engaged two tea masters in his tea stall and he was paying Rs.500/- per day. Ex.P8 was the salary certificate issued by P.W.3. The Tribunal failed to consider the evidence of P.W.3 and Ex.P8 and fixed the notional income at Rs.6,000/- per month. On the side of the appellant, it is further stated that as per the notification of the



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year 2019, the notional monthly income is fixed at Rs.9,000/- and the same is to be revised from time to time.

7.A judgment of the Hon'ble Division Bench of this Court reported in **CDJ 2018 MHC 8221**, equivalent to **2019(1) TNMAC 54**, in the case of **Andal and others vs Avinav Kannan** and another, is cited, wherein this Court has held that 'the cost of living' has to be fixed in the monthly income. It is further stated that the two wheeler was belonged to the deceased which itself is a proof of his earning capacity.

8.On the side of the respondent it is stated that no document was filed to prove that P.W.3 was running a tea stall. P.W.3 has admitted that his monthly income is Rs.5,000/-. If the income of P.W.3 is Rs.5,000/-, there is no possibility of the deceased who was working under P.W.3 to get more income than that of the owner of the tea stall.

9.Considering the submission made by both sides, it is decided that the proper notional income at the time of accident is Rs.9,000/- per month. Hence, the income is fixed at Rs.9,000/- per month. Adding 40% towards



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future prospects, the monthly income is fixed at Rs.12,600/- [9000 + 3600 (40 % 9000)]. The deceased was a bachelor and after deducting 50% towards his own expenses, he might have contributed Rs.6,300/- for his family members. The age of the deceased was 23 years and multiplier 18 is applicable (6300 x 18 x 12). Rs.13,60,800/- is fixed as loss of income.

10.As per the dictum of the Hon'ble Supreme Court reported in **2018(4) RCR Civil 837**, in a case of **Magma General Insurance Co. Ltd., Vs Nanu Ram Alias Chuhru Ram**, the claimants are entitled to Rs.40,000/- each towards loss of consortium. The Tribunal has awarded amount towards loss of estate Rs.15,000/-, funeral expenses Rs.15,000/- which are all reasonable.

Loss of income	-	Rs.13,60,800/-
loss of consortium	-	Rs.1,20,000/-
Loss of estate	-	Rs.15,000/-
Funeral expenses	-	Rs.15,000/-

Total	-	Rs.14,70,800/- (Check)

11. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced



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from Rs.9,77,200/- to Rs.14,70,800/- (Rupees Fourteen Lakhs Seventy Thousand Eight Hundred only).

(ii) The appellants / claimants are directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order.

(iii) The second respondent / The National Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.14,70,800/- (less the amount 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 cost to the credit of M.C.O.P.No.394 of 2019 on the file of the Motor Accident Claims Tribunal (Special Court for E.C & NDPS Act Cases), Pudukkottai, within a period of eight weeks from the date of receipt of a copy of this order. The appellants are not entitled for any interest for the default period for the enhanced amount.

(iv) On such deposit being made, the appellants 1 and 2/ claimants 1 and 2 are at liberty to withdraw a sum of Rs.6,35,400/-(Rupees Six Lakhs Thirty Five Thousand Four Hundred only) each, and the 3rd appellant/ 3rd



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claimant is permitted to withdraw his share of Rs.2,00,000/- (Rupees Two Lakhs only) after following the due process of law, less any amount already received by them. The claimants are not entitled for interest for the default period, if there is any.

15.09.2022

Index: Yes / No

Internet : Yes / No

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To

1.The Motor Accident Claims Tribunal (Special Court for E.C & NDPS Act Cases), Pudukkottai.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

**Pre - Delivery Judgment made in
C.M.A(MD)No.499 of 2022**