



C.M.A.(MD)No.478 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 02.09.2022

Delivered On : 29.09.2022

CORAM

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

C.M.A.(MD)No.478 of 2022

1.Kumarasamy

2.Suganya,

3.Saranya,

.. Appellants /claimants

Vs.

1.Senthil Kumar

2. The Branch Manager,

The United India Insurance Company Limited,

LIC Building,Gandhiji Road, Thanjavur

District..

.. Respondents /

Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount awarded to the appellants by the judgment and decree, dated 06.12.2021, in M.C.O.P.No.188 of 2020 on the file of the Special District Court - Motor Accident Claims Tribunal,Thanjavur.



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C.M.A.(MD)No.478 of 2022

For Appellant : Mr.C.Hitesh Kumar  
For Respondent No. 1 : No appearance  
For Respondent No.2 : Mr.C.Karthik

### **JUDGMENT**

This Civil Miscellaneous Appeal has been filed to enhance the award passed in M.C.O.P.No.188 of 2020 on the file of the Special District Court - Motor Accident Claims Tribunal, Thanjavur, dated 06.12.2021. The appellants herein are the claimants and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. Brief substance of the petition in M.C.O.P.No.188 of 2020 is as follows:-

On 30.01.2020, when the deceased-Mallika was travelling in a two wheeler, bearing Registration No.TN-55-AK-0298, as a pillion rider, the vehicle was driven by its rider in a rash and negligent manner and hit against a road side stone and met with an accident. She was taken to Thanjavur Medical College and Hospital, as inpatient and she died on 02.02.2020. The petitioners are her dependents and they claimed a sum of Rs.50,00,000/- as compensation.



C.M.A.(MD)No.478 of 2022

3. Brief substance of the counter filed by second respondent, in

M.C.O.P.No.188 of 2020, is as follows:-

The first respondent and the claimant colluded together and filed this petition. The claimants have to prove that the policy was in force, at the time of accident. The rider of the two wheeler was not having valid driving licence. The deceased was not wearing helmet. The age, income, profession of the deceased are all denied. The claim is excessive.

4. On the side of the claimants, 2 witnesses were examined and 12 documents were marked. On the side of the respondents, no witness was examined and no document was marked. After trial, the Tribunal awarded a sum of Rs.7,76,520/- as compensation for the claimants.

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

The age of the deceased was 45 years, but, the Tribunal wrongly come to a conclusion that the age of the deceased was 56 years. The oral evidence of P.W.1 cannot be given more weightage than the documents, such as, death certificate, post mortem certificate and Aadhar card. The Tribunal ought to have fixed the future prospects at 25% instead of 10% and



C.M.A.(MD)No.478 of 2022

multiplier '14' has to be adopted, instead of 9. The Tribunal is wrong in fixing 10% contributory negligence on the deceased for non wearing of helmet.

6. On the side of the appellants, it is stated that the age of the deceased was 45 years, but, the Tribunal has wrongly fixed the age as 56 years. In the Aadhar card, post mortem report and in the death certificate, the age of the deceased was mentioned as 45 years. Only based on the oral evidence of P.W.1, the Tribunal has fixed the age of the deceased as 56 years. P.W.1 has admitted that the age mentioned in the Aadhar card is correct.

7. On the side of the respondents, it is stated that P.W.1 has deposed that the age of the deceased was 56 years. P.W.1 is the husband of the deceased. Only, based on his evidence, the Tribunal has correctly fixed the age of the deceased. Birth certificate, school certificates were not filed on the side of the claimants. The age of the second claimant is 28 years. In the above circumstances, there is no possibility of the deceased to be 45 years.

8. A perusal of the records reveals that in the petition, the age of the first petitioner was mentioned as 60 years. At the time of giving deposition, the age of the first petitioner was mentioned as 61 years and in the Aadhar



C.M.A.(MD)No.478 of 2022

card, the date of birth of the first petitioner was mentioned as 19.10.1960.

P.W.1 has deposed that his wife is 5 years younger to him, he has also admitted that at the time of accident he wrongly mentioned the age of his wife as 45 years. Deposition of P.W.1 is as follows:-

“விபத்தில் இறந்து போன மல்லிகா எனக்கு முதல் மனைவி. எனக்கும், அவருக்கும் இடையே சுமார் 5 வயது வித்தியாசம் உண்டு. விபத்து சமயம் அவருக்கு சுமார் 56 வயது இருக்கும். அவரது பிறந்த வருடம் ஞாபகம் இல்லை. விபத்து சமயம் மல்லிகாவுக்கு 45 வயது என்றால் சரியல்ல.”

9. The age mentioned in the death certificate and post mortem report cannot be taken as authenticated proof of age. When there is a contradiction in the evidence of P.W.1 and the documents, it is the duty of the claimants to prove the correct date of birth. But, the claimants failed to mark the birth certificate or the school certificate.

10. P.W.1 has admitted that he has wrongly mentioned the age of the deceased as 45 years, at the time of accident. Hence, the age mentioned in the post mortem report cannot be considered. The date of birth mentioned in the Aadhar card was not corroborated by the evidence of P.W.1. In the above circumstances, it is decided that the age of the deceased fixed by the Tribunal is correct.



C.M.A.(MD)No.478 of 2022

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11. On the side of the appellants, is stated that future prospects 25% has to be fixed and multiplier '14' has to be applied. Considering the age of the deceased, the Tribunal has fixed the future prospects at 10% and applied multiplier '9' , which are reasonable.

12. On the side of the appellants, it is stated that the petitioner has wrongly deducted 10% for non wearing of helmet, which is not reasonable. There is no evidence that the deceased was wearing a helmet. The deceased died of head injuries. In the above circumstances, deducting 10% towards non-wearing of helmet is reasonable.

13. It is stated that the deceased was working as a Tailor and she was earning Rs.30,000/- per month. But, the Tribunal has fixed the monthly income only as Rs.9,000/- and the same has to be enhanced. No document was filed on the side of the appellants to prove that the deceased was a qualified Tailor. Income Tax particulars were not filed on the side of the appellants. In the above circumstances, it is decided that the notional income fixed by the Tribunal is correct.



C.M.A.(MD)No.478 of 2022

14. As discussed above, the award fixed by the Tribunal is reasonable. There is nothing sufficient enough to interfere in the orders of the Tribunal. Hence, this Appeal is dismissed and the order of the Tribunal is hereby confirmed. No costs.

(i) The second respondent - Insurance Company, is directed to deposit the entire compensation of Rs.7,76,520/- (if not 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.

(ii) On such deposit being made by the Insurance Company, the appellants/ claimants are permitted to withdraw their share amount as apportioned by the Tribunal with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The Claimants are not entitled for interest for the default period, if there is any default.

**29.09.2022**

Index : Yes/No  
Internet : Yes/No  
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C.M.A.(MD)No.478 of 2022

**R. THARANI, J.**

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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.

To

1.The Special District Court -

Motor Accident Claims Tribunal,

Thanjavur

2.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.

Pre-delivery Judgment made in  
C.M.A.(MD)No.478 of 2022

**29.09.2022**