



C.M.A(MD)No.880 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.08.2022

Pronounced on : 26.08.2022

CORAM

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

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and

C.M.P(MD)No.2066 of 2022

1.V.Anbuchelvan
2.A.Danam
3.A.Sethuraman
4.A.Lakshmanan

... Appellants / Claimants

Vs

1.S.Pandi
2.The Regional Manager,
M/s.United India Insurance Co.Ltd.,
Office Door No.7A, West Veli Street,
Madurai.

... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the fair and decreetal order dated 03.03.2021 made in M.C.O.P.No.425 of 2017 on the file of Motor Accident Claims Tribunal (Special District Court), Madurai (in-charge), in so far as they relate to quantum of compensation awarded by the Tribunal to the amount restricted in the claim petition, allow the above appeal.



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For Appellant : Mr.S.Srinivasa Raghavan
For R1 : Dispensed with
For R2 : Mr.A.S.Mathialagan

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.425 of 2017 on the file of Motor Accident Claims Tribunal (Special District Court), Madurai (in-charge). The appellants herein are the claimants and the respondents herein are the respondents in the claim petition.

2.Brief substance of the petition filed by the claimants is as follows:

On 20.05.2017 at about 8.20 a.m., when the deceased was travelling as a pillion rider in a two wheeler bearing registration number TN 59 AS 5913 along the Sivagangai main road, the rider of the two wheeler drove the vehicle in a slow and cautious manner, keeping the left side of the road. At that time, an auto, bearing registration number TN 64 A 2976 was driven by its driver in a rash and negligent manner turned the vehicle to the right side without any signal and hit against the two wheeler. The deceased died on his way to the hospital. The first respondent auto driver was responsible for the accident.



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The deceased was earning Rs.800/- per day as a milk vendor. The claimants are his dependants and they claim a sum of Rs.15,00,000/- as compensation.

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

On the side of the respondent it is stated that the petition is not maintainable. The First Information Report was not against the auto driver. The auto driver was not having valid driving license at the time of accident. There was no badge endorsement in the driving license. It was the rider of the two wheeler who drove the vehicle in a rash and negligent manner and hit against the auto. The auto was standing on the left side of the road and when the auto driver was observing the road traffic to turn the vehicle, it was the rider of the two wheeler, who dashed against the auto. The age, income and avocation of the deceased are all denied. The claim is excessive.

4. Three witnesses were examined and six documents were marked on the side of the petitioners. Two witnesses were examined and five documents were marked on the side of the respondents. Three documents were marked as Ex.X1 to Ex.X3. The Tribunal awarded a sum of Rs.15,00,000/- as compensation.



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5. Against the award, the claimants filed this appeal on the following grounds:

The Tribunal ought to have awarded an amount of Rs.26,65,300/- as computed after the trial. The Tribunal ought not to have restricted the award amount. The Tribunal is competent and empowered to grant more compensation than what has been claimed by the claimants. The Tribunal after following the judgment of the Hon'ble Supreme Court in Pranay Sethi case, Sarala Verma case and Amrit Sali Banu's case and also the judgment of the Hon'ble Division Bench in Andal vs Abinav Kannan case, has calculated the loss of income as Rs.25,89,300/-. Grant of compensation under the head of loss of consortium are very low. The grant of compensation for transport expenses, loss of estate, funeral expenses are very low.

6. On the side of the appellants, it is stated that the Tribunal assessed the monthly income of the deceased as Rs.13,700/- per month. After adding 40% towards future prospects. By applying multiplier 15 and considering the number of the claimants and after deducting 1/4 of the income, the Tribunal has fixed the loss of income as Rs.25,89,300/- which is reasonable. The



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Tribunal has awarded a lesser amount only on the ground that the claimant have restricted their claim. The Court has the power to grant more than what was claimed. The Tribunal is not reasonable in restricting the amount. Only based on the evidence, the Tribunal has to fix the monthly income. The Insurance company did not file an appeal, questioning either the liability or the quantum.

7.On the side of the appellants, a judgment of the Hon'ble Supreme Court reported in **2003 Supreme Court Cases(Crl) 523** in the case of **Nagappa Vs Gurudayal Singh and others**, is cited, wherein it is held as follows:

"21.For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal / Court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section(4) to Section 166, even the report submitted to the Claims Tribunal under sub-section(6)



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of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the Court may permit amendment to the claim petition."

8.On the side of the appellants, a judgment of the Hon'ble Supreme Court reported in **(2020) 4 SCC 413** in the case of **Kajal Vs Jagdish Chand and others**, is cited, wherein it is held as follows:

"33.We are aware that the amount awarded by us is more than the amount claimed. However, it is well settled law that in the motor accident claim petitions, the Court must award the just compensation and, in case, the just compensation is more than the amount claimed, that must be awarded especially where the claimant is a minor."

9.Another judgment of the Hon'ble Supreme Court reported in **AIR 2008 Supreme Court 1221** in the case of **A.P.S.R.T.C & Another Vs. M.Ramadevi and others**, is cited, wherein it is held that *"(A) Motor Vehicles Act (59 of 1988), S.168 - Compensation - Enhancement - There is no restriction that Tribunal / Court cannot award compensation exceeding the amount claimed. 2002 AIR SCW 5348 Foll."*



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10. On the side of the respondent, it is stated that the deceased was only a house-wife. Fixing monthly income at Rs.13,700/- is excessive. The notional income at the relevant period is only Rs.6,500/- per month.

11. On the side of the appellants, it is stated that only based on the judgment of the Division Bench of this Court, reported in **2019(1) TNMAC 54(DB)** in the case of **Andal and others Vs. Avinav Kannan and another**, the Tribunal has fixed the monthly income as Rs.13,750/-.

12. On the side of the appellants it is stated that the respondents cannot question the quantum since the respondents failed to file an appeal or a cross objection. It is for the Court to decide just the compensation and hence this Court has decided to modify the compensation amount.

13. Admittedly, the deceased is only a house wife. The notional income prevailing at the relevant time is only Rs.9000/ - per month. Hence, the monthly income is fixed as Rs.9,000/- per month. Considering the age of the deceased, 40% is added towards future prospects(9,000 + 3,600). Monthly



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income after adding 40% of monthly income is Rs.12,600/-. After deducting 1/4 share towards her own expenses, the deceased might have contributed Rs.9,450/- for her family members. Multiplier 15 is applicable. Hence, the loss of income is fixed as (9450 x 15 x 12) Rs.17,01,000/-. As per the dictum of the Hon'ble Supreme Court in the Pranay Sethi case, a sum of Rs. 70,000/- is awarded towards conventional charges. In total, the claimants are eligible to get Rs.17,71,000/- as compensation. All the claimants are entitled to equal share in the compensation amount.

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

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.15,00,000/- to Rs.17,71,000/- (Rupees Seventeen Seventy One Thousand only) 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.

(iii) The second respondent - the Insurance Company, is directed to deposit the entire compensation of Rs.17,71,000/- (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 to the credit of M.C.O.P.No.425



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of 2017 on the file of the Motor Accident Claims Tribunal (Special District Court), Madurai(Incharge), within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the Oriental Insurance Company Limited, the appellants / claimants are permitted to withdraw the award amount of Rs.17,71,000/-, along with proportionate interest in equal shares. Consequently, connected miscellaneous petition is closed. Claimants are not entitled to any interest for the default period, if there is any.

26.08.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal (Special District Court),
Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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