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C.M.A.No.1546 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1546 of 2022

P.N.Chinnadurai

... Appellant

Vs.

1.V.Vijayaraj

2.J.Vivekanandan

3.The United India Insurance Company Ltd.,

Having Office at Christo building,

Bank Road, Ooty,

Nilgiris

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.04.2019 in M.A.C.T.O.P.No.1479 of 2016 on the file of the Motor Accident Claims Tribunal Cum III Additional District and Sessions Judge, Coimbatore.

For Appellants : Mr.K.Thilageswaran

For Respondents : Mr.Thangavadhana Balakrishnan for R1

Mr.M.B.Gopalan for R3

No appearance for R2



J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation awarded by the Tribunal dated 03.04.2019 in M.A.C.T.O.P.No.1479 of 2016 on the file of the Motor Accident Claims Tribunal-Cum-III Additional District and Sessions Judge, Coimbatore.

2. The appellants are the claimants in M.A.C.T.O.P.No.1479 of 2016 on the file of the Motor Accident Claims Tribunal-Cum-III Additional District and Sessions Judge, Coimbatore. They filed the Claim Petition claiming a sum of Rs.20,00,000/- as compensation for the death of Kaliyannan, in the accident that took place on 12.05.2015.

3. According to the appellants, on the date of accident on 12.05.2015 at about 06.00 a.m., while the deceased along with his friend was riding his two wheeler bearing Registration No.TN-37-AC-3048 and while crossing the Kuntha bridge near Mary Land, a Eicher lorry driven by the 1st respondent bearing Registration No.TN-43-F-3454 drove the same in a rash and negligent manner without observing traffic Rules and dashed against the two wheeler of the deceased; that due to the impact, the deceased suffered injuries and succumbed to the same; that the deceased, who was aged about 20 years, was



an Engineering student; and hence, the respondents 1 to 3 are liable to pay Rs.20,00,000/- as compensation.

4. The first and second respondents, who are driver and the owner of the lorry, remained ex-parte before the Tribunal.

5. The Insurance Company filed a counter denying all the averments and submitted that in any case the claim is excessive.

6. Before the Tribunal, the appellant examined himself as P.W.1 and marked Exs.P1 to P12. The 3rd respondent/ Insurance Company did not let-in any oral or documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence held that the deceased died due to the rash and negligent act of the driver of the second respondent's vehicle and directed the third respondent being the insurer of the vehicle to pay a sum of Rs.11,16,500/- as compensation to the appellant.

8. The learned counsel for the appellant submitted that the accident took place in the year 2015 and the deceased was an Engineering student at



C.S.I.Engineering College, Keiti,, Ooty at the time of the accident; that the appellant had stated that the said fact in the claim petition, F.I.R and in his deposition; and that there is no contra evidence let in by the respondents. However, the Tribunal erroneously awarded the compensation taking the educational qualification of the deceased as +2. He submitted that in any case the notional income taken by the Tribunal is very meagre. The learned counsel further submitted that filial consortium was not awarded by the Tribunal. The learned counsel submitted that the future prospects was not considered by the Tribunal while computing the “loss of income”.

9. Per contra, the learned counsel for the 3rd respondent/Insurance Company submitted that the Tribunal has awarded compensation in accordance with law. The appellant has not filed any proof to show that the deceased was pursuing an Engineering course and hence, the notional income fixed by the Tribunal is just and reasonable. However, the learned counsel fairly submitted that the “filial consortium” of Rs.40,000/- ought to have been awarded and the Tribunal ought to have considered 40% towards “future prospects” while calculating the income.



10. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the third respondent/Insurance Company and perused all the materials available on record before this Court. Though notice was served on the respondents 1 and 2, none had entered appearance.

11. This Court on perusal of the order passed by the Tribunal finds that the appellant has not produced any documentary proof to show that the deceased was an Engineering Graduate. However he had stated so in his Claim Petition, in his deposition before the Tribunal and in the F.I.R. The 3rd respondent/Insurance Company has not denied the said fact. Hence, this Court is of the view that the notional income fixed by the Tribunal as Rs.60,000/- per annum is very meagre.

12. Considering the fact that the deceased was an Engineering student and in similar circumstances this court had fixed the notional income for the accident of the year 2015, between Rs.12,000/- to Rs.15,000/- and in the facts and circumstances of the case, this Court is of the view that it would be reasonable to fix the notional income as Rs.12,000/- per month. The deceased is entitled to 40% towards future prospects. Since, the deceased was aged about 20 years, the multiplier of 18 has to be applied. Further the deceased was a



bachelor, hence, 50% has to be deducted towards his personal expenses. Hence, the compensation under the head "loss of income" has to be Rs.12,000 + Rs.4,800 (40% towards future prospects) = Rs.16,800 x 12 x 18 x ½ (Personal Expenses) = Rs.18,14,400/-.

13. The appellant is the father. Hence, he is entitled to filial consortium of Rs.40,000/-. The award of the Tribunal under the other heads are confirmed.

Thus, the compensation awarded by the Tribunal is modified as follows:-

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of Income	10,80,000	18,14,400	enhanced
2.	Loss of Estate	15,000	15,000	confirmed
3.	Medical Bills	6,500	6,500	confirmed
4.	Funeral expenses	15,000	15,000	confirmed
5.	Loss of filial consortium	---	40,000	awarded
	Total	11,16,500	18,90,900	Enhanced by Rs.7,74,400

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,16,500/- is hereby enhanced



to Rs.18,90,900/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 3rd respondent/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw their respective shares of the award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. No costs.

18.07.2023

Index: Yes/No

Internet: Yes/No

Speaking order: Yes/ No

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To

- 1.The III Additional District and Sessions Judge,
Motor Accident Claims Tribunal, Coimbatore.
- 2.The Section Officer, VR Section, High Court of Madras
Chennai – 600 104.



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SUNDER MOHAN,J.

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