



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.06.2023

CORAM

THE HON'BLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.2010 of 2021

1.Pandiyan

2.Santhi

...Appellants/petitioners

Versus

1. Raja

2.The New India Assurance Company Ltd.,
Jawaharlal Nehru Street,
Pondichery.

... respondents

Prayer : Civil Miscellaneous Appeal is filed to set aside the judgment and decree dated 26.03.2021 passed in M.C.O.P.No.471 of 2018, on the file of the Motor Accident Claims Tribunal, III Additional District Court, Villupuram @ Kallakurichi and enhance the award amount.

For Appellants :Mr.K.Suryanarayanan

For Respondents :Ms. S.R.Sumathy

JUDGMENT

The parents of the deceased Ramesh, who died in the road accident that had taken place on 04.12.2018, have preferred this Civil Miscellaneous Appeal against the judgment and decree passed by the Motor Accident



Claims Tribunal, III Additional District Court, Villupuram @ Kallakurichi

in M.C.O.P.No.471 of 2018 dated 26.03.2021.

2. The above said claim petition was filed under Section 166(1) of Mother Vehicles Act, 1988 claiming compensation of Rs.15,00,000/- for the death of their son, Thiru Ramesh in the road accident.

3.The Tribunal, after considering the entire oral and documentary evidence, has passed an award for an amount of Rs.11,08,400/- with interest @ 7.5% per annum from the date of the petition till the date of deposit (excluding the period of dismissal of petition for default, if any).

4.The learned counsel for the appellants would contend that the deceased who was a cab driver, aged about 22 years, bachelor died in a road accident as mentioned supra and the Tribunal has fixed monthly income of the deceased as Rs.7000/-, which is on the lower side and prayed to fix the monthly income of the deceased as Rs.20,000/- though he was said to have earned a sum of Rs.40,000/- per month and consequently, enhance the compensation.



5. Per contra, the learned counsel for the Insurance Company would submit that as no proof was filed to prove the income of the deceased, the trial Court has fixed the income of the deceased at Rs.7000/- per month.

6. The manner in which the accident occurred is not in question. The only grievance of the appellants /claimants of the deceased is that the monthly income as fixed by the Tribunal for the purpose of calculating the loss of income is on the lower side and the same be modified.

7. Heard the learned counsels on either side and perused the entire materials placed on record.

8.To substantiate the case of the claimants, the first claimant was examined as PW1 and 10 exhibits were marked as Exs.P1 to P10. Whereas, on the side of the respondents, neither any oral evidence was let in, nor documents were exhibited.

9. It is the evidence of PW1 that on 04.12.2018, at about 0.60 hours, while the deceased was driving the Car bearing Registration no.TN.11-AB-6645 along Bangalore-Chennai National Highways near Mevalurkuppam,



the driver of the first respondent who drove the vehicle, namely, lorry bearing registration no.TN.73-L-8199 in a rash and negligent manner and dashed against the car, resultantly the driver of the car, was succumbed to injuries.

10. Deceased was stated to be a Cab Driver. Regarding the income of the deceased, no proof was filed by the claimants. The Tribunal has fixed the notional income of the deceased as Rs.7000/- per month, which according to the learned counsel for the appellants, is so meagre.

11. As regards the fixation of salary of a driver in the case of ***“Kala Devi & Others Vs. Bhagwan Das Chauhan & Others”*** reported in 2014(2) TNMAC 680(SC), the Hon'ble Supreme Court has fixed the notional income of the deceased therein @ Rs.9000/- per month. Further, in the case of ***“Parminder Singh Vs. New India Assurance Co.Ltd. and Others”*** reported in 2019(2) TNMAC 145(SC), the Hon'ble Supreme Court has fixed the notional income of a driver @ Rs.10,000/- per month, for the accident that had taken place in the year 2009. The Hon'ble Supreme Court in the case of ***“Chandra @ Chanda @ Chandramam and another Vs.***



Mukesh Kumar Yadav and Others” reported in 2021 (2) TN MAC 498(SC), fixed the notional income of a driver @ Rs.8000/- per month for the accident that took place in the year 2016.

12. Taking into consideration of the income fixed by the Hon'ble Supreme Court in the above mentioned cases, in order to sub-serve the ends of justice, this Court feels it appropriate to fix the notional income of the deceased at Rs.11,000/- p.m. To prove the age of the deceased, the Driving licence of the deceased is marked as Ex.P9, wherein, the Date of birth is mentioned as 13.07.1997. Relying upon the said details, the age of the deceased is fixed as 22 years at the relevant point of time. For the age group of persons between 21-25, as per the law laid down in the case of ***“Sarala Varma Vs. Delhi Transport Corporation and Another”*** reported in 2009 TNMAC (1) SC, the relevant and appropriate multiplier is 18. Since the deceased was a bachelor, 50% towards his personal and living expenses is to be deducted. Then, as per the law laid down in the case of ***“National Insurance Company Ltd., Vs. Pranay Sethi”*** reported in (2017) 16 SCC 680, in respect of the persons self employed or on a fixed salary for the age group below 40 years, 40% is to be added, while calculating the



compensation.

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13. In the light of the law laid down by the Hon'ble Supreme Court in the above referred case laws, this Court determines the compensation payable under the head 'Loss of dependency', as tabulated hereunder:

<i>S.No.</i>	<i>Description</i>	<i>Amount</i>
1.	Age of the deceased at the time of accident	22 Years
2.	Multiplier with reference to the age of the deceased, as per Sarla Verm's case	18
3.	Annual salary of the deceased (Rs.11,000/- x 12)	Rs.1,32,000/-
4.	Future prospectus of the deceased (40% of the net annual salary income) (Rs.1,32,200/- x 40/100)	Rs.52,800/-
5.	Net annual income of the deceased (Rs.1,32,000/- + Rs.52,800/-)	Rs.1,84,800/-
6.	50% deduction towards personal and living expenses of the deceased (Rs.1,84,800x1/2)	Rs.92,400/-
7.	Loss of dependency (Rs.92,400/- x 18)	Rs.16,63,200/-

14. As regards the compensation granted by the Tribunal in respect of other heads appears to be reasonable and hence, needs no interference.

Accordingly, the revised award is tabulated as follows:



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S.No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Awards confirmed / enhanced/ granted/reduced
1.	Loss of dependency	Rs. 10,58,400/-	Rs. 16,63,200/-	Enhanced
2.	Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
3.	Loss of Love and affection of the petitioners	Rs. 20,000/-	Rs. 20,000/-	Confirmed
4.	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
	Total	Rs. 11,08,400/-	Rs.17,13,200/- (Rounded off to Rs.17,13,000/-)	Enhanced to Rs.6,04,600/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal is enhanced to a sum of Rs.17,13,000/- from 11,08,400/- and the same is payable together with interest @ 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the said amount of Rs.17,13,000/- after deducting the amount already deposited to the credit of MCOP No.471 of 2018 on the file of Motor Accident Claims Tribunal/III Additional District Court, Villupuram @ Kallakurichi. The appellants/claimants are entitled to withdraw their respective shares as



apportioned by the Tribunal. The appellants/claimants shall pay the Court fee for the enhanced amount. The tribunal shall not disburse the amount till such time as the certified copy showing proof of payment of entire Court fee has been produced. No costs. Consequently, connected Miscellaneous Petitions if any, are closed.

15.06.2023

Index : Yes/No.
Internet: Yes/No.
Dn

To

The Motor Accident Claims Tribunal,
III Additional District Court, Villupuram @ Kallakurichi.



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R.KALAIMATHI.J.,

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