



C.M.A.No.2351 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2351 of 2021

P. Karuppannan

... Appellant/Claimant

Vs.

1. M. Vadivelkumar

[R1 remained ex-parte before Tribunal.
Hence notice to R1 dispensed with]

2. National Insurance Company Limited,
Rep. by its Divisional Manager,
2nd Floor, 81-D,
Chetty Street, Opp Bus Stand,
Thiruchengodu,
Namakkal District – 637 211.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 24.03.2021 made in M.C.O.P.No.476 of 2020 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellant	:	Ms. S. P. Yuaraj
For R1	:	No appearance
For R2	:	Mr. M. Krishnamoorthy



C.M.A.No.2351 of 2021

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No.476 of 2020, dated 24.03.2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

2. For the sake of convenience, the parties are referred hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimant is that on 08.12.2019 at about 17.00 hours, the deceased Magesh @ Mageswari had walking on the extreme side of the mud road in Dharmapuri to Tirupattur road at Erumaikarankottai Diversion near the land of Govindasamy, at that time a Lorry bearing Registration No.TN 52 J 9561 belonging to the first respondent had driven by its driver in rash and negligent manner came in high speed and dashed against the deceased in which, the Lorry was capsized and resulted in causing grievous injuries to the deceased, driver and cleaner of the said lorry. Immediately, the deceased was taken to the



C.M.A.No.2351 of 2021

Government Head Quarters Hospital, Krishnagiri and had succumbed to injuries. In this regard a criminal case was also registered in Crime No.223 of 2019 under Sections 279 and 337 IPC against the driver of the lorry. The claimant who is the son of the deceased Magesh @ Mageswari has filed claim petition under Section 166 of the Motor Vehicles Act claiming compensation for a sum of Rs.30,00,000/-.

4. The first respondent is the owner of the Lorry has not contested the claim and was remained ex-parte. The second respondent is the insurer of the lorry has contested the claim and contended that the accident was not occurred due to the negligent act of the driver of the first respondent, since the first respondent's vehicle carrying goods against the provided heights, there is violation of the Motor Vehicles Act and Rules and hence the Insurance Company is not liable to pay the compensation. The age, avocation, previous health condition and legal heirship of the deceased were also disputed.

5. Based on the evidences placed on record, the Tribunal in Point Nos.1 & 2 has held that the accident had occurred only due to the rash and negligent driving of the first respondent and there is no fault on the part



of the deceased and the second respondent as the insurer of the lorry is liable to indemnify the first respondent and the second respondent is is liable to pay the compensation to the claimant. In Point No.3, the Tribunal has quantified and granted compensation for a sum of Rs.9,10,000/- along with interest @ the rate of 7.5% per annum from the date of filing of claim petition till the date of realization to the claimant.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has filed this appeal seeking enhancement of compensation.

7. The learned counsel appearing for the claimant has submitted that the Tribunal has not properly appreciated the evidences placed on record regarding the employment of deceased i.e., doing palm jaggery business. The monthly income of the deceased fixed at Rs.8,000/- is on the lower side, hence prays to enhance the monthly income of the deceased fixed by the Tribunal and to award “Just and Fair” compensation.

8. Per contra, the learned counsel appearing for the second



C.M.A.No.2351 of 2021

respondent – Insurance Company has submitted that based on the evidences placed on record, the Tribunal has rightly fixed the notional income of the deceased and also awarded just compensation, hence prays to confirm the award of the Tribunal.

9. I have heard the submissions made by the learned counsel on both sides and also perused the materials available on record.

10. The only contention raised by the learned counsel appearing for the claimant is that the notional income fixed on the deceased by the Tribunal is on the lower side and prays to enhance the compensation. The Insurance Company has not preferred any appeal against the same.

11. The Tribunal based on the evidences placed on record regarding income, has fixed the notional income of the deceased as Rs.8,000/-. Even though, the claimant claims that the deceased was doing business of Palm Jaggery and Palm Products and was earning a sum of Rs.15,000/- per month, no documentary evidence or corroborative evidence produced to prove the same, hence the Tribunal has fixed the notional income of the deceased as Rs.8,000/- per month. The Division Bench of this



C.M.A.No.2351 of 2021

Court in *Andal and others vs. Avinav Kannan and others [2019 (1) TN*

MAC 54 (DB)] has laid down guidelines for fixing the notional income of various categories of persons whose income has not been proved, based on Cost Inflation as issued by CBDT, vide Notification No.370142(E) (No.26/2008) F.No.370/42/3/2008-TPL) dated 13.06.2008, for the purpose of determining of notional income of the deceased person, based on the Apex Court judgement of *Syed Sadiq Vs. United India Insurance Company [2014 (1) TNMAC 459]*. Accordingly the notional income of the deceased fixed by the Tribunal is hereby revised to Rs.14,000/-.

12. Except modification of Notional income, the claimant has not raised any grievance against the compensation awarded by the Tribunal under other heads. The Tribunal has already awarded 25% of the notional income as future prospects as per the dictum laid down by the Hon'ble Apex Court in *National Insurance Co. Ltd., vs. Pranay Sethi and other [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]*. The claimant herein is the only son of the deceased the Tribunal has rightly deducted 1/2 as the personal expenses of the deceased. Since the age of the deceased in 43 years at the time of accident, the Tribunal has properly applied multiplier '14' as per the Judgment of the Apex Court in *Sarla Verma and others Vs. Delhi*

***Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC***

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121]. sAccordingly, compensation awarded by the Tribunal under the head loss of dependency is reworked as Rs.14,70,000/- [$\{14000 + 3500 (25\% \text{ of } 14000)\} = 17500 \times 12 \times 14 \times 1/2$]. As far as the other heads the compensation awarded by the Tribunal are concerned, the same are just and reasonable and this Court finds there is no need to interference and the same are hereby confirmed.

13. Thus the compensation awarded by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of Dependency	Rs.8,40,000/-	Rs.14,70,000/-	Enhanced
2.	Loss and Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Loss of Consortium	Rs.40,000/-	Rs.40,000/-	Confirmed
	Total	Rs.9,10,000/-	Rs.15,40,000/-	Enhanced by Rs.6,30,000/-

14. In the result, this Civil Miscellaneous Appeal is partly



C.M.A.No.2351 of 2021

allowed and the compensation awarded by the Tribunal is at Rs.9,10,000/- is hereby enhanced to Rs.15,40,000/- [Rupees Fifteen Lakhs and Forty Thousand only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second respondent/ Insurance Company is directed to deposit the award amount, now determined by this Court, along with proportionate 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 to the credit of M.C.O.P.No.476 of 2020 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri. On such deposit, the claimant is permitted to withdraw the award amount, now determined by this Court, along with proportionate interest and costs, less the amount, if any, already withdrawn. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

16.11.2023

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C.M.A.No.2351 of 2021

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K.RAJASEKAR,J.

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C.M.A.No.2351 of 2021

C.M.A.No.2351 of 2021

16.11.2023