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C.M.A.No.3645 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE N.MALA

**C.M.A.No.3645 of 2021**

S.Suriya

...Appellant

Vs.

1.Abdul Rahman Sait

2.The United India Insurance Company Limited.,  
(Third Party Cell), having Registered Office at  
No.48, Arcot Road, Saligramam – 600 093.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 22.10.2021 made in MCOP.No.353 of 2019 on the file of Motor Accident Claims Tribunal, (II Additional District and Sessions Judge), Tiruvallur at Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.P.Sankaranarayan

R1 : Vacated



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## **J U D G M E N T**

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The appeal is filed challenging the judgment and decree dated 22.10.2023 in MCOP.No.353 of 2019 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Tiruvallur at Poonamallee.

2. The claimant has filed the Appeal for enhancement of compensation.

3. The facts are that while the deceased was walking on the road on 06.06.2019, the 1<sup>st</sup> respondent's motorcycle bearing Reg.No.TN-05-BF-3760, driven by its driver in a rash and negligent manner came in the same direction and hit the deceased, due to which the deceased sustained grievous injuries and was admitted to the Chennai Government Hospital. In spite of treatment, the deceased died on 06.06.2019.

4. According to the claimant, the deceased was an agricultural coolie and was earning a sum of Rs.10,000/- per month. The deceased was



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aged about 75 years at the time of the accident and therefore the claim petition was filed claiming a sum of Rs.8,00,000/- as compensation along with interest and costs.

5. The 1<sup>st</sup> respondent remained absent before the Tribunal and the 2<sup>nd</sup> respondent filed a counter denying all the contentions raised in the claim petition, particularly the negligence, liability and quantum.

6. Before the Claims Tribunal, the claimant examined herself as PW1 and examined one other witness as PW2, who was an eye witness to the accident. Exs.P1 to P10 were marked in support of the claim petition. On the side of the respondents two witnesses were examined and the copy of the Policy was marked as Ex.R1.

7. The Tribunal awarded a sum of Rs.3,10,000/- as compensation. Not satisfied with the compensation awarded by the Tribunal, the claimant has filed the above appeal. As the appeal is filed for enhancement of compensation the findings regarding liability and negligence are not discussed.



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**8.** According to the appellant's counsel the Tribunal erred in assessing the notional income of the deceased at Rs.6,000/- per month, when the claim was made for Rs.10,000/-. The learned counsel for the appellant submits that as the accident took place in 2019, the reasonable income of Rs.7,500/- ought to have been fixed by the Tribunal. On the amounts awarded under the conventional heads, the learned counsel fairly submit that there is no dispute.

**9.** The learned counsel for the 2<sup>nd</sup> respondent on the other hand submitted that the award of the Tribunal is fair and reasonable and does not call for interference.

**10.** I have heard both the counsel and considered the materials placed on record.

**11.** The Tribunal has fixed the notional income at Rs.6,000/- per month and in my view, the learned counsel for the claimant is justified in his submission that as the accident took place in 2019 and considering that the value of money had decreased due to inflation the fair and reasonable



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amount would be Rs.7,500/- per month. Therefore, the income of the deceased is fixed at Rs.7,500/- per month. With respect to the award towards conventional heads, as there is no dispute, the same is confirmed. Accordingly, the loss of income is calculated as follows and the Award is modified as under.

| <i>Sl. No.</i> | <i>Heads</i>                                                                                                                        | <i>Calculation</i>                                                                                                                                                                             |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.             | Income                                                                                                                              | Notional Income Rs.7,500/- per month                                                                                                                                                           |
| 2.             | Personal Expense 1/3                                                                                                                | Deducted as personal expenses of the deceased in 1/3 <sup>rd</sup> of 7,500/-<br>Rs.7,500/- - Rs.2,500/- = Rs.5,000/-<br><br>The Annual Income is Rs.5,000/- x 12<br>= <b>Rs.60,000/- p.a.</b> |
| 3.             | Compensation Multiplier of “5” is applied                                                                                           | Rs.60,000/- x 5 = <b>Rs.3,00,000/-</b>                                                                                                                                                         |
| 4.             | Conventional Heads:-<br>1) Loss of Consortium : Rs.40,000/-<br>2) Loss of Estate : Rs.15,000/-<br>3) Funeral Expenses : Rs.15,000/- | <b>Rs.40,000/-</b><br><b>Rs.15,000/-</b><br><b>Rs.15,000/-</b><br>-----<br><b>Rs.70,000/-</b><br>-----                                                                                         |
| Total          |                                                                                                                                     | Rs.3,00,000/- + Rs.70,000/-<br>= <b>Rs.3,70,000/-</b>                                                                                                                                          |

**12.** Thus, the award of the Tribunal is modified and the appellant is entitled to Rs.3,70,000/- as compensation. It is submitted by the learned



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counsel for the 2<sup>nd</sup> respondent that the entire award amount has already been deposited along with accrued interest and costs. Therefore, a direction is issued to the 2<sup>nd</sup> respondent to deposit the enhanced amount of Rs.60,000/- along with 7.5% interest within a period of six (6) weeks from the date of receipt of a copy of the order. On such deposit being made, the claimant is entitled to withdraw the same by making proper application before the Tribunal.

**13.** In the result, the Civil Miscellaneous Appeal is **partly allowed**. No costs.

**20.04.2023**

dsa

Index :Yes/No  
Internet :Yes/No  
Neutral Citation :Yes/No  
Speaking order /Non-speaking order



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To:-

WEB COM The II Additional District and Sessions Judge,  
Motor Accident Claims Tribunal,  
Tiruvallur at Poonamallee.



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**N.MALA, J.**

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