



C.M.A.No.2391 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.02.2023

PRONOUNCED ON : 06.04.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.2391 of 2018

1.Kalaiarasi
2.V.Kalaiselvan
3.Kathiravan

... Appellants

vs.

1.Chinnasamy
2.Ganesan

3.The Branch Manager,
Oriental Insurance Company Ltd.,
The Oriental Insurance Co.Ltd.,
Vth Floor,
Lakshmi Complex,
No.75-B/1, Salai Road,
Thillai Nagar (East),
Trichy.
(1st and 2nd respondents in the
above appeal are remind exparte
before the Tribunal. Hence they are
given up, since no order has been
passed against them).

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award judgment and decree dated 19.01.2017 in M.C.O.P.No.73 of 2011 on the file of the Motor Accident Claims Tribunal and Subordinate Judge, Attur, Salem District.



WEB COPY



C.M.A.No.2391 of 2018

For Appellants : Mr.E.Kannadasan

For Respondents : Mrs.R.Srividhya [R3]

JUDGMENT

The claimants 1 to 3 have filed this Civil Miscellaneous Appeal against the judgment and decree passed on 19.01.2017 in M.C.O.P.No.73 of 2011, by the Motor Accident Claims Tribunal / Subordinate Judge, Attur, Salem District for enhancement of compensation.

2. The claim petition was filed under Section 166 of the Motor Vehicles Act, for a claim of Rs.15,00,000/- as compensation on account of the death of Kalaivanan during the road accident that had occurred on 15.11.2010.

3. The learned counsel for the appellants would contend that the compensation awarded by the Tribunal is very meagre and for the personal expenses, instead of deducting 1/3rd, 50% of the income was deducted by the Tribunal which is not correct and the contributory negligence fixed on the deceased was without any evidence. The monthly income should have been taken as Rs.6,500/- and the amount awarded under other heads are also not sufficient.



7. To prove the factum of negligence, mother and brothers of the deceased have spoken about the manner in which the accident had occurred. It could be inferred that in order to avoid hitting the two wheeler of the deceased, when the deceased turned to the right side and due to which he succumbed to the injuries on the spot. It is also clear that had the driver of the bus which belongs to the 1st respondent slowed down his



C.M.A.No.2391 of 2018

vehicle, the accident could have been averted.

WEB COPY

8. So also the finding of the Tribunal to the effect that as the deceased tried to overtake another bus, and hit on the bus of the 1st respondent, both the deceased as well as the driver of the 1st respondent's bus are responsible for the accident. Therefore, the Tribunal was correct in fixing 50% as contributory negligence on the deceased which need not be disturbed.

9. From the evidence of PW1 and PW2, it is seen that the deceased was working as an electrician. To substantiate the same, no document was filed and marked. As per the law laid down in ***Syed Sadiq v. United India Insurance Company Ltd.***, reported in **2014 (1) TN MAC 459 (SC)**, the Hon'ble Supreme Court has fixed the income of a person who was doing vegetable vending work as Rs.6,500/-, for the accident occurred in the year 2008. Based on the same, the deceased was said to be working as an electrician, and earning a sum of Rs.9,000/- p.m. The monthly income fixed by the Tribunal at Rs.6,500/- appears to be reasonable. The Hon'ble Supreme Court has held in ***National Insurance Co. Ltd., v. Pranay Sethi and others*** reported in **2017 (2) TN MAC 609(SC)**, if the deceased happens to be below 40 years, if he is a self employed person



C.M.A.No.2391 of 2018

when calculating income, for future prospects 40% to be added. After adding future prospects, monthly income comes to Rs.9,100/-.

10. In ***Smt.Sarla Verma and Ors., v. Delhi Transport Corporation and Another*** reported in ***2009 (2) TN MAC 1 (SC)***, the Hon'ble Supreme Court has held that for personal and living expenses, when the deceased is a bachelor, 1/3rd to be deducted, if the family is large and dependent on deceased or deceased having a widowed mother.

11. In this case, the deceased has left behind his widowed mother. Therefore, for the personal expenses deductions should not be 50% and only 1/3rd to be deducted. As per Ex.P6, namely copy of the Transfer Certificate, the age of the deceased is fixed as 31 years on the date of accident. Therefore, multiplier 16 is taken by the Tribunal is correct. Based on the above said observations, after deducting 1/3rd it would come to Rs.6067/- (Rs.9100/- - Rs.3033/-).

Calculation

Notional Income = Rs.6,500/-

40% Future Prospects = Rs.2,600/-

Total = Rs.6,500/- + Rs.2,600/- = Rs.9,100/-

After 1/3 deduction = Rs.6,067/-



C.M.A.No.2391 of 2018

Loss of Income

WEB COPY = Rs.6,067/- x 12 x 16

= Rs.11,64,864/-

In respect of other heads, amount awarded by the Tribunal appears to be reasonable, therefore, no need to interfere with the same. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Loss of Income	Rs.6,24,000/-	Rs.11,64,864/-	Enhanced
2	Funeral Expenses	Rs. 25,000/-	Rs. 25,000/-	Confirmed
3	Damage to Clothes	Rs. 5,000/-	Rs. 5,000/-	Confirmed
4	Loss of Love and Affection	Rs.1,00,000/-	Rs. 1,00,000/-	Confirmed
	Total	Rs.7,54,000/-	Rs.12,94,864/-	
	Less 50% towards Contributory Negligence	Rs.3,77,000/-	Rs.6,47,432/-	

12. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.3,77,000/-** to **Rs.6,47,432/-** which would carry interest at the rate of 7.5% per annum.



C.M.A.No.2391 of 2018

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.3,77,000/- to Rs.6,47,432/-**.

(iii) The 3rd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.6,47,432/-**(less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.73 of 2011 on the file of Motor Accident Claims Tribunal / Subordinate Judge, Attur, Salem District, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellants / claimants are at liberty to withdraw the same as per the Orders passed by the Tribunal after following due process of law. The claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants.

06.04.2023

Index : Yes/No
Speaking / Non-speaking order
ssn



WEB COPY



C.M.A.No.2391 of 2018

To:

1. The Motor Accident Claims Tribunal,
Subordinate Judge, Attur, Salem District.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



WEB COPY



C.M.A.No.2391 of 2018

R.KALAIMATHI, J.,

ssn

Pre-delivery Judgment in

C.M.A.No.2391 of 2018

06.04.2023