



C.M.A(MD)No.1485 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1485 of 2012

1.Veeraiah

2.Veerammal

... Appellants/Claimants

Vs.

1.Mani

2.The Branch Manager,
Oriental Insurance Company Ltd.,
T.S.No.3607/21,
Sathiamoorthy Road,
Pudukkottai.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, to allow the appeal to the effect that so as to enhance the compensation to the tune of Rs.1,00,000/- in addition to compensation awarded by the Tribunal by modifying the judgment and set aside the portion of judgment which exonerating the 2nd respondent from its liability and fix the joint and several liability of the 2nd respondent along with 1st respondent in M.C.O.P.No.39 of 2012 by the judgment dated 31.07.2012 by the learned Motor Accident Claims Tribunal (Additional District Judge), Pudukkottai.



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For Appellants : Mr.S.Deenadhayalan

For R1 : No Appearance

For R2 : Mr.C.Ramachandran

JUDGEMENT

The present appeal has been filed by the claimants seeking enhancement of compensation.

2. The claimants are the parents of the deceased, who was a pillion rider in a motor bike. The deceased was bachelor who was studying in the final year in I.T.I. The claimants have claimed a sum of Rs.10,00,000/- (Rupees Ten Lakh only) towards compensation. The insurance company had filed a counter contending that the driver of the motor bike was not possessing a valid driving license at the time of the accident. They have also taken a defence that the claimants have to establish the fact that the vehicle was insured with the second respondent insurance company.

3. The tribunal after considering the evidence on either side, has arrived at a finding that the driver of the motor bike was not having a



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valid driving license. In view of the said finding, the tribunal has exonerated the insurance company and saddled the owner of the vehicle with the liability to pay the compensation.

4. Though the company has taken a defence that there is no insurance for the vehicle, the tribunal has proceeded to hold that there was an valid insurance policy for the vehicle on the basis of an application filed by the insurance company under Section 170 of the Motor Vehicles Act in I.A.No.37 of 2010. Therefore, it cannot be in dispute that vehicle in dispute was insured with the 2nd respondent insurance company.

5. As far as the quantum of compensation is concerned, the tribunal has taken into consideration the notional income of the student as Rs.6,000/- (Rupees Six Thousand only) per month and has deducted 1/3rd towards his personal expenses being a bachelor and thereafter, arrived at a compensation of Rs.5,28,000/- (Rupees Five Lakh and Twenty Eight Thousand only) towards loss of income. This is sought to be attacked in the present appeal. The learned counsel for the appellants/claimants had contended that the multiplier that was applied



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by the tribunal is based upon the age of the claimants. He further contended that the said position of law has been changed and the multiplier which is relevant to the age of the deceased has to be taken into consideration. Therefore, he contended that the multiplier applied by the tribunal, namely 11 is erroneous and the correct multiplier is 18.

6. Per contra, the learned counsel appearing for the insurance company had contended that the notional income taken by the tribunal for an accident that has taken place in the year 2008 as Rs.6,000/- (Rupees Six Thousand only) is on the higher side and only Rs.4,500/- (Rupees Four Thousand Five Hundred only) should have been taken as notional income for an I.T.I student. He further contended that being a bachelor, the tribunal ought not to have deducted 1/3rd, but should have deducted 50% towards personal expenses. He prayed for sustaining the award passed by the tribunal and not to enhance the award.

7. I have carefully considered the submissions made on either side.

8. Being a final year I.T.I student, I do not find any illegality or infirmity in the notional income taken by the tribunal as Rs.6,000/-



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(Rupees Six Thousand only). In fact, the tribunal has not taken into consideration the future prospects of the student. However, the deduction has to be made at the rate of 50% and hence, the monthly income should be taken as Rs.3,000/- (Rupees Three Thousand only) per month. As rightly contended by the learned counsel appearing for the appellants, the correct multiplier that is applicable to the present case is 18. If the loss of personal income is calculated at $3000 \times 18 \times 12$, it would be arrived at Rs.6,48,000/- (Rupees Six Lakh Forty Eight Thousand only). However, the tribunal has awarded only Rs.5,28,000/- (Rupees Five Lakh and Twenty Eight Thousand only) towards loss of income. Therefore, this Court is of the view that except under the head of loss of income, this Court would not like to interfere in the awarded compensation under the other heads.

9. The compensation under the category of loss of income is enhanced from Rs.5,28,000/- (Rupees Five Lakh and Twenty Eight Thousand only) to Rs.6,48,000/- (Rupees Six Lakh Forty Eight Thousand only). In other aspects, the award of the tribunal is hereby confirmed. The enhanced compensation amount will carry an interest at the rate of 7.5% from 17.09.2009 till the date of realization.



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10. Though the owner of the vehicle has been served, he has not chosen to appear either in person or through counsel. Though the owner of the vehicle has been examined as P.W.2, he has not chosen to produce the driving license of the driver, who has driven the vehicle. Even the tribunal has arrived at a finding that the driver of the motor bike was not having a driving license. In view of the fact that there is a breach of policy condition, the award amount shall be paid by the insurance company and thereafter, it may be recovered from the owner of the vehicle by filing execution proceedings in M.C.O.P.No.39 of 2012.

11. With the above said observations, this Civil Miscellaneous Appeal stands partly allowed. No costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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- To
- 1.The Motor Accident Claims Tribunal
(Additional District Judge), Pudukkottai.
 - 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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