



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.325 of 2023

A.Sathiya(died)

1.Minor A.Mathavi

2.Minor A.Logeswaran

3.Mookkammal

4.Muthu pillai

(Minor respondents 1 and 2 are represented by their paternal grand-mother, the fourth appellant herein)

:Appellants/Petitioners

.vs.

1.G.Mahendran

2.The Branch Manager,
United India Insurance Company Limited,
7-A, West Veli Street,
Madurai 625 001. : Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award and decree made in M.C.O.P.No.264 of 2018, dated 13.6.2022, on the file of the Motor Accidents Claims Tribunal/Special District Judge(MACT), Madurai, for enhancement of compensation.

For Appellant :Mr.V.Sakthivel



For Respondent-2 :Mr.A.S.Mathialagan

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JUDGMENT

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed this Civil Miscellaneous Appeal.

2.The brief facts leading to the filing of the present appeal is as follows:

The deceased is the husband of the first Petitioner/wife(deceased) and father of the minor claimants/appellants 1 and 2 herein. On 9.1.2018, the first respondent was driving his motor cycle bearing Registration No. TN 59B 8475 at about 8.45 hours in Madurai Alagal Koil Main Road, near Nayakkanpatti Villakku, from south to North. At that time, the first respondent drew his Motor cycle in a rash and negligent manner from north to south and dashed against the two wheeler of the deceased bearing Registration No. TN 57A 6849 and he was succumbed to injuries and died in the hospital on 10.1.2018. Hence the Petitioners have filed a claim petition claiming a compensation of Rs.30 lakhs.



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3.The second respondent/Insurer filed a counter to the effect that the first respondent has driven his motor cycle from north to south in a moderate speed. The deceased was riding his motor cycle came in the opposite direction without following the traffic rules in a rash and negligent manner and without giving any signal suddenly crossed the road which resulted in the accident.

4.On the side of the Petitioners/claimants, P.W.1 and P.W.2 were marked and Ex.P1 to Ex.P15 were marked. On the side of the respondents, no evidence was adduced and no documents were marked.

5.The Tribunal after appreciating the evidence of P.W.1 and P.W.2 and FIR filed in this regard, found that only the first respondent drove the vehicle in a rash and negligent manner and awarded a compensation of Rs.15,88,664/-with interest at the rate of 7.5% p.a.

6.The Tribunal has fixed the notional income of the deceased at Rs.8000/-p.m. The learned counsel for the appellants submitted that the deceased was a mason by profession and the accident took place in the year 2018 and being a Mason, he would easily earn a



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sum of Rs.15,000/- per month. The Tribunal has fixed only Rs. 8000/- as monthly income, which according to the learned counsel for the appellants, is not correct.

7.The learned counsel for the second respondent would submit that the deceased was a Mason by profession and no documentary evidence was filed in support of his income and further the deceased was negligent in driving his motor cycle.

8.In the light of the above facts, the points that arose for consideration in this appeal is as follows:

1.Whether the Tribunal is right in fixing the quantum by adopting Rs.8,000/- as notional income?

2.Whether the claimants are entitled to how much compensation?

9.The finding of the Tribunal that the first respondent drove the vehicle in a rash and negligent manner is not disputed and no cross-appeal is filed by the Insurance Company with regard to the quantum of compensation. It is not disputed that the deceased was aged 33 years at the time of accident. The first Petitioner Sathiya is



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the wife and second and third petitioners are his minor children, aged 6 and 2 and ½ years respectively. The first Petitioner died pending the claim petition. Thereafter, it appears that the fifth claimant has been impleaded and the fourth petitioner is the mother of the deceased. It is relevant to note that P.W.1 in his evidence stated that the deceased was a Mason by profession aged 33 years. This Court is of the view that even according to the Minimum Wages Act, at the relevant point of time, the monthly income of the deceased would be Rs.12,000/-, whereas, the Tribunal has fixed only Rs.8000/- as notional income. Accordingly, this Court considering the age of the deceased and his profession fixed the monthly income of the deceased at Rs.12,000/-p.m., and after adding 40% towards future prospects and by deducting 1/4th towards his personal expenses, the monthly income of the deceased comes to Rs.12,600/- and by adopting proper multiplier of '16' to the age group of the deceased, the loss of dependency comes to Rs.24,19,200/-(Rs.12,600x12x16=Rs.24,19,200/-). It is relevant to note that the trial Court has in fact deducted one third towards personal expenses considering the fact that the first claimant died during the pendency of the claim petition. It is relevant to note that the Apex Court in ***Kirthi and another vs. The Oriental Insurance Company Limited reported on***



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2021(1) TN MAC 84(SC) has held that the claims and legal liabilities crystallize at the time of accident itself and changes post accident not to ordinarily affect pending proceedings and deduction of 1/3rd amount will not be proper, when there are four dependents to the deceased. The award of Rs.80,000/- towards loss of parental consortium and Rs.40,000/- towards loss of filial consortium and Rs.15,000/- towards funeral expenses and Rs. 15,000/-towards loss of estate and Rs.5000/-towards transport expenses are allowed and confirmed and accordingly, the total compensation comes to Rs.Rs.25,74,200/- with interest at the rate of 7.5% p.a.,from the date of claim petition till the date of realization.

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation is enhanced from Rs.15,88,664/- to Rs. 25,74,200/- with interest at the rate of 7.5% p.a., from the date of claim petition till the date of realization. The second respondent/Insurance Company is directed to deposit the modified enhanced award amount, less the award amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first and second appellants herein, who are minors are each entitled to Rs.



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10 lakhs with proportionate accrued interest and costs, less the award amount, if any already withdrawn. The third appellant is entitled to the remaining amount of Rs.5,74,200/- with proportionate accrued interest and costs, less the award amount, if any, already withdrawn by her and she is permitted to withdraw the same by filing necessary application before the Tribunal. The fourth claimant is not entitled to any award amount. The Tribunal is directed to deposit the share of the minor claimants 1 and 2 in any one of the nationalized Bank, initially for a period of three years, renewable thereafter, till they attain majority. The fourth appellant, grand-mother of the minor claimants is permitted to withdraw the interest from the fixed deposits made in the name of the minor claimants, once in three months directly from the Bank and utilize the same for the welfare of the children. The claimants are directed to pay the excess court fee for the enhanced award amount before the Registry. Registry is directed to draft the decree only after paying the excess court for the enhanced award amount by the claimants. No costs.

06.04.2023

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



To

1.The Motor Accidents Claims Tribunal
Special District Judge(MACT)
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN
C.M.A(MD)No.325 of 2023

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