



C.M.A. (MD)No.320 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.320 of 2023

1.Alagammal

2.Karuppiyah

...Appellants / petitioners

Vs.

1.Ramesh

2.M/s. Royal Sundaram General Insurance Company Ltd.,
through its Manager (TP) Claim,
Door No.1, Subramaniyan Building 2nd Floor,
Club House Road,
Chennai Town,
Chennai Corporation.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the Award made in MCOP.No.45 of 2020 on the file of the Motor Accidents Claims Tribunal (Additional District Court), Paramakudi, dated 28.06.2022.



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For Appellants : Mr. D. Senthil

For 1st respondent : Mr.R. Yasar Arafath

For 2nd respondent : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Award, dated 28.06.2022 made in MCOP.No.45 of 2020, on the file of the Motor Accidents Claims Tribunal (Additional District Court), Paramakudi, seeking enhancement of compensation.

2. The deceased is aged about 47 years. He was working as a Chef in day time and Watchman in night time and earning a sum of of Rs.39,000/- per month. On 16.01.2020, at about 3.30 pm., while he was rearing his goats and sitting on the bridge near the Canal Madurai to Rameswaram High Road, a car bearing Regn.No. TN65 AH 5330 came in a rash and negligent manner and the driver drove the car out of the main road and come on the mud side and dashed against deceased and dragged the deceased for certain distance. As a result, the deceased succumbed to injuries and the car has also got fire and one of the passengers also died. Criminal case has also been registered against the driver of the offending



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car. Hence, wife and father of the deceased filed a claim petition.

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3. The stand of the 2nd respondent / Insurance Company that the accident had occurred only due to the sudden crossing of the deceased in road.

4. Before the Tribunal PW.1 to PW.4 were examined. Exs.P1 to P12 were marked. No oral or documentary evidence adduced on the side of the respondents.

5. On analyzing the evidence of witnesses, particularly, the evidence of eyewitness, FIR filed against the driver of the car. The Tribunal has found that mainly car driver drove the car in a rash and negligent manner and came into the mud side and came out of the road and dashed against the deceased, who was sitting near the canal.

6. On a perusal of the evidence, ultimately the Tribunal fixed the monthly income of the deceased as Rs.5,000/- and awarded a sum of Rs.9,35,000/- towards of loss of income. Challenging the same, the present appeal came to be filed.



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7. The learned counsel appearing for the petitioners / appellants would submit that the evidence of PW.3 and PW.4 clearly shows that the deceased was working as a Chef in the hotel in the morning time and night working as watchmen and their evidence clearly proved the income earned by the deceased. Besides, the Tribunal has not applied future prospectus. Hence, seeks enhanced compensation.

8. Despite the name of the 2nd respondent printed in the cause list no one has appeared.

9. In the light of the above, following points arise for consideration:

1. Whether the Tribunal is right in fixing the the income of the deceased at Rs.5,000/- despite ignoring the evidence of PW.3 and PW.4?

2. Whether the compensation awarded by the Tribunal is just and fair compensation?

10. As rightly pointed by the counsel for the appellants, the accident took place while the deceased was sitting in the road side after



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rearing his goats in the nearby canals. The car in fact came out of the road and dashed against the deceased and dragged him for some distance. Besides, this has been clearly established on record. The First Information Report has also been filed against the driver of the car and the negligence aspect is also not disputed and no appeal has been filed by the Insurance Company.

11. The evidence of PW.3 and PW.4 clearly shows that the deceased was working as a Chef in the hotel in the morning time and also used to work as a watchman in the night and earned a sum of Rs.39,000/- per month. However, the Tribunal has not considered the entire evidence and simply fixed the notional income at Rs.5,000/-, merely on the inconsistent evidence of PW.3 and PW.4. The fact remains that the deceased was earning considerable amount, has not been disputed. In such view of the matter, the deceased was working as a chef in the hotel and watchman, the Court cannot except the documents to prove the same. Therefore, this Court is of the view that even though no document has been filed, considering the the age of the deceased and had sufficient number of goats for rearing and that the accident took place in the year 2020, he would have definitely earned an income of Rs.13,000/- per month and



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hence, the income of the deceased is fixed at Rs.13,000/- per month.

Admittedly, the deceased was 47 years old, which has been proved before the Tribunal. Such view of the matter, 25% to be added towards future prospectus. Further, 1/3th to be deducted towards personal expenses, considering the number of dependants and the correct multiplier applicable for in the present case is “13”. Therefore, the loss of income is calculated as follows:

$$\begin{aligned} \text{Rs.13,000/-} \times 25\% &= \text{Rs.13,000/-} + \text{Rs.3,250/-} \\ &= \text{Rs.16,250/-} \times 1/3 = \text{Rs.5,416/-} \\ &= \text{Rs.16,250/-} (-) \text{Rs.5,416/-} \\ &= \text{Rs.10,834} \times 13 \times 12 \\ &= \text{Rs.16,90,104/-} \end{aligned}$$

12. Accordingly, the compensation awarded by the Tribunal towards loss of income is hereby modified and enhanced from Rs.7,80,000/- to Rs.16,90,104/-. Since no amount was awarded towards loss of estate a sum of Rs.15,000/- is hereby awarded. In all other aspects, the amount awarded by the Tribunal is hereby confirmed.



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13. The details of the modified amount as follows:

S.No	Heads	Amount Rs.
1.	Loss of income	16,90,104
2.	Loss of consortium	40,000
3.	Loss of love and affection	1,00,000
4.	Loss of Estate	15,000
5	Funeral expenses	15,000
	Total	18,60,104

14. Accordingly, the amount awarded by the Tribunal is enhanced from Rs.9,35,000/- to Rs.18,60,104/- together with interest at 7.5% per annum from the date of petition till date of deposit as compensation and costs.

15. The 2nd respondent / Insurance Company is directed to deposit the entire award amount of Rs.18,60,104/- together with interest at 7.5% per annum from the date of petition till the date of deposit and costs to the credit of MCOP.No. 45 of 2020, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Paramakudi, after deducting the amount already deposited if any, within a period of twelve weeks from



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the date of receipt of copy this order. On such deposit, the 1st appellant is permitted to withdraw a sum of Rs.15,00,000/- together with accrued interest at 7.5% per annum and the 2nd appellant / claimant is permitted to withdraw a sum of Rs.3,60,104/- along with accrued interest at 7.5% per annum on filing necessary application before the Tribunal. The appellants are directed to pay the excess Court fee towards the enhanced award amount.

16. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

02.06.2023

Index : Yes/No
Internet : Yes/No
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To

1. The Motor Accidents Claims Tribunal (Additional District Court),
Paramakudi,
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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