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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.218 of 2023
and
C.M.P(MD)No.2422 of 2023

The Branch Manager,
M/s.United India Insurance Company Limited,
No.19/1, First Floor, Kalpana Complex,
Birds Road,
Trichy – 620 001.

:Appellant/Respondent No.2

/vs/

1.Vijayalakshmi

2.Minor Darshan

represented by his mother and next friend, the first respondent
herein Vijayalakshmi. :Respondents 1 and 2/Claimants

3.D.Prasath :Respondent No.3/Respondent
No.1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act Challenging the award made in M.C.O.P.No.201
of 2018, dated 21.09.2022, on the file of the Motor Accidents
Claims Tribunal/Special District Court, Tiruchirappalli.

For Appellant :Mr.I.Suthakaran

For Respondents :No appearance
1 and 2



JUDGMENT

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Challenging the quantum of compensation awarded by the Tribunal, the present Civil Miscellaneous Appeal came to be filed.

2.The parties are referred to herein as per their ranking before the Tribunal.

3.The Tribunal has awarded the following compensation:

1.Loss of Dependency	-Rs.43,36,752/-
2.Loss of consortium to the wife	-Rs.35,000/-
3.Loss of parental consortium to the second Petitioner	-Rs.35,000/-
4.Loss of Estate	-Rs.10,500/-
5.Funeral expenses	-Rs.10,000/-
6. for transport expenses	-Rs.10,000/-

total	-Rs.44,36,752/-

4.The brief facts leading to the filing of this appeal is as follows:

The deceased Baskar while travelling in a Scorpio car belonging to the first respondent, which is insured with the appellant herein, bearing Registration No. TN 45 BU 4757 from Chennai to Trichy, the driver of the first respondent drove the vehicle in a rash and negligent manner and dashed against the



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vehicle proceeding in front of the said vehicle. As a result, the deceased succumbed to injuries and a crime is also registered against the driver of the offending vehicle. The deceased was 45 years at the time of accident and he was doing real estate business and also from agricultural lands, he earns a sum of Rs.70,000/- p.m.. Hence the legal heirs filed claim petition claiming a compensation of Rs.2 crores.

5.The second respondent/Insurance company took a stand that unidentified vehicle has caused the accident besides the income and other aspects also disputed.

6.On the side of the Petitioners, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P12 were marked. On the side of the respondents, no witness was examined and no document was marked.

7.The Tribunal, considering the evidence of the eye witnesses, held that the driver of the offending vehicle was at fault and negligent in causing the accident. The Tribunal, taking note of the income tax returns of the deceased, fixed the annual income of the deceased at Rs.2,71,730/-after deducting 10%



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towards tax and that apart, the Tribunal also added another sum of Rs.1 lakhs as loss of income from the agricultural lands. Challenging the same, the present Civil Miscellaneous Appeal came to be filed.

8.The learned counsel for the appellant/Insurance Company mainly submitted that as far as the agricultural income is concerned, the property of the deceased will remain with the claimants, who are the legal heirs. Therefore, there will not be any loss of agricultural income. The claimants can continue the agricultural activities. Therefore, the Tribunal on assumption fixed such loss of income from agricultural lands, which is not valid in the eye of law.

9.Despite service of notice and name printed in the cause-list, none appears on behalf of the respondents, either in person or through counsel.

10.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 agricultural



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income merely on guess work, particularly, when the income-tax returns of the deceased is filed?

11.It is relevant to note that the Tribunal has accepted the income tax returns of the deceased and had taken the loss of income at Rs.2,71,730/- after deducting 10% towards income tax. It has also taken Rs.1 lakh as loss of agricultural income merely on the ground that if the properties are let out to the tenants, it would fetch Rs.1 lakh as lease amount. It is relevant to note that the Tribunal has assumed such income on its own without any evidence whatsoever on record. Admittedly, the income tax returns of the deceased for the assessment year 2016-17 filed clearly prove the income of the deceased at the relevant point of time. Having considered the above document, the Tribunal ought not to have assumed the loss of agricultural income without any evidence on record. It is relevant to note that admittedly the claimants are the legal heirs of the deceased. Agricultural properties may be maintained by the claimants. In such view of the matter, loss of income from the agricultural lands cannot be assumed merely on guess work and without any evidence.

12.In this regard, the learned counsel for the appellant



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Insurance Company relied on a decision of the Division Bench of this Court in the case of ***G.Palaniswame and others /vs/ Jawaharlal B. Patel reported on 2020(2) TN MAC 25(DB)***, has held that the agricultural income of the deceased always remain with the claimants and similarly, the Honourable Apex Court in the case of ***State of Haryana .vs. Jasbir Kaur reported in AIR 2003 SC 3696*** held that:

"...The land possessed by the deceased still remains with the claimants as his legal heirs. There is however a possibility that the Claimants may be required to engage persons to look after Agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where Agricultural income is the source."

13.Considering the above judgments and further without any evidence,the Tribunal on its own fixed the loss of agricultural income, is without any basis. In such view of the matter, the Tribunal finding fixing Rs.1 lakh as loss of agricultural income has to be necessarily set aside and accordingly, the said finding is set aside.

14.The deceased was aged 45 years at the time of accident and annual income as per the income tax returns is Rs.2,71,730/-



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and if 25% is added towards future prospects ie, Rs.67,932.50/- is added, the annual income comes to Rs.3,39,662.50/- and after deducting one third of the amount towards the personal expenses of the deceased, the annual income comes to Rs.2,26,441.66/- and if multiplier of '14' is applied to the age group of the deceased, then the loss of dependency comes to Rs.31,70,184.34/- (Rs.2,26,441.66 x 14), rounded off to Rs.31,70,200/-The Tribunal has awarded a sum of Rs.35,000/- to the first Petitioner wife towards loss of consortium and the same is enhanced to Rs.40,000/- and loss of parental consortium to the second Petitioner at Rs.35,000/- is enhanced to Rs.40,000/-, loss of estate is enhanced from Rs. 10,000/- to Rs.15,000/-, funeral expenses is enhanced from Rs. 10,000/- to Rs.15,000/-, loss of estate at Rs.10,000/- is enhanced to Rs.15,000/- and transport expenses at Rs.10,000/- stands confirmed. and thus the total compensation is arrived at as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of dependency	Rs. 43,36,752/-	Rs. 31,70,200/-	reduced
2	Spousal consortium to the first Petitioner/wife	Rs.35,000/-	Rs.40,000/-	enhanced
3	For loss of estate	Rs.10,000/-	Rs.15,000/-	enhanced



4	For funeral expenses	Rs.10,000/-	Rs.15,000/-	enhanced
5	For parental consortium to the second petitioner/spm	Rs.35,000/-	Rs..40,000/-	enhanced
6	For transport expenses	Rs.10,000/-	Rs.10,000/-	same
7	Total	Rs. 44,36,752/-	Rs. 32,90,200/-	reduced

Thus the total compensation payable to the Petitioners is Rs. 32,90,200/- with interest at the rate of 7.5%p.a from the date of claim petition till the date of realization.

15.In the result,the Civil Miscellaneous Appeal is partly allowed reducing the compensation from Rs.44,36,752/- to Rs. 32,90,200/- with interest at the rate of 7.5%p.a., from the date of claim petition till the date of realization. The appellant Insurance Company is directed to deposit the above said modified award amount with accrued interest and costs, less the award amount already deposited,if any, to the credit of claim petition before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first petitioner/wife is entitled to a sum of Rs.17,90,200/- and the second Petitioner/minor son is entitled to a sum of Rs.15,00,000/- with proportionate accrued interest and costs, less the award



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amount, if any already withdrawn. The first Petitioner is permitted to withdraw her share in the award amount as stated supra, by filing necessary application before the Tribunal. The share of the minor claimant/second petitioner is directed to be deposited in any one of the nationalized Bank, in an interest bearing fixed deposit, initially for a period of three years, renewable thereafter, till the minor attains majority. The first Petitioner/mother is permitted to withdraw interest from the said deposit directly from the bank, once in three months and utilize the same for the welfare of the child. If the entire award amount is already deposited, the appellant Insurance Company is permitted to withdraw the excess award amount from the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

15.06.2023

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

1.The Motor Accidents Claims Tribunal,
(Special District Judge),
Tiruchirappalli.

9/11



2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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N.SATHISH KUMAR.,J.

vsn

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