



C.M.A.(MD)No.20 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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Minor Diwan Mohamed
Through his grandfather and
next guardian Mohammed Abubacker,
S/o.Sultan Salhahudin,
No.3-A/1, Bangalow street,
Pettai, Tirunelveli.

...Appellant/Petitioner

Vs.

1.Sankarasubramanian

2.Iffco-Tokio General Insurance Company Ltd.,
Through its Branch Manager,
No.885/1-A, V.V.Complex,
North Bye Pass Road,
Vannarapettai,
Tirunelveli.

...Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.no.895 of 2010 on the file of the Motor Accident Claims Tribunal, (3rd Additional District and Sessions Judge), Tirunelveli, dated 07.03.2013.



For Appellant : Mr.T.Selvakumaran
For R2 : Mr.V.Sakthivel
For R1 : Exparte

JUDGMENT

Not satisfying with the quantum fixed by the Motor Accident Claims Tribunal in M.C.O.P.No.895 of 2010 on the file of the Motor Accident Claims Tribunal (III Additional District and Sessions Court), Tirunelveli, dated 07.03.2013, the claimant had preferred this appeal.

2.For the sake of convenience, the parties herein are referred to as per their rank before the Tribunal.

3.The brief facts, leading to the filing of the civil miscellaneous appeal, are as follows:-

(i) The deceased is the mother of the claimant. She was travelling as a pillion rider in a motorcycle bearing Registration No.TN-74-H-0748. When the two wheeler was coming near Sripuram Bus Stop, an auto bearing Registration No.TN-72-B-9677 came in a rash and negligent manner and dashed against the



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two wheeler from the behind. As a result, the deceased was thrown away from the two wheeler and succumbed to injuries. A case was also registered against the driver of the auto for the offences under Sections 279, 304(A) IPC in Crime No. 209 of 2010. The deceased was aged about 34 years. He was a tailor by profession and he was earning a sum of Rs.5,000/- per month. Hence, the claim petition was filed.

(ii)The second respondent before the Tribunal took a stand that the hair of the deceased got stuck in the hook in the auto, due to which she fell down. The auto did not dash the two wheeler as stated by the claimant. Hence, he opposed the claim petition.

4.Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P16 were marked. On the side of the defendants no oral and documentary evidence were marked.

5.The Tribunal after analysing the evidence of P.W.1 and P.W.2, FIR, Motor Vehicles Inspector Report and rough sketch, had fixed the negligence on the part of the driver of the auto and fixed the monthly income of the deceased at



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Rs.4,500/- . Challenging the same, the present appeal had been filed seeking enhancement of compensation by the claimant.

6.The learned counsel for the appellant submitted that the the deceased was tailor by profession and she was 34 years old at the time of accident. She was earning a sum of Rs.7,500/- per month. Whereas the Tribunal had fixed only a sum of Rs.4,500/- as monthly income of the deceased and the same is very meager. Hence, the same has to be enhanced.

7.The learned counsel for the respondent would submit that the Tribunal after analysing the entire materials on record had awarded the compensation and the same does not require any interference.

8.In view of the above submissions, now the point arise for consideration in this appeal is:

1.Whether the compensation fixed by the Tribunal is just and reasonable or requires to be enhanced?



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9. Admittedly, the negligence fixed on the part of the offending vehicle is not disputed. The Tribunal had fixed Rs.4,500/- as monthly income of the deceased. The deceased was tailor by profession. The said fact had been clearly established and pleaded by P.W.1. The accident was occurred in the year 2010. Hence, the deceased would have easily earned a sum of Rs.6,000/- per month. But, the tribunal had erred in adopting the monthly income of Rs.4,500/-. Hence, this Court fixes the notional income of the deceased at Rs.6,000/- (Rupees Six Thousand only) per month. Considering the age of the deceased, 40% (Rs. 2,400/-) future prospects is added and 1/3 of her income is deducted towards her personal expenses, hence, the monthly income of the deceased is fixed at Rs.5,600/- (Rupees Five Thousand Six Hundred only). If multiplier 16 is adopted, the total loss of dependency would come around Rs.10,75,200/- (Rupees Ten Lakhs Seventy Five Thousand and Two Hundred only).

10. The compensation awarded under the head 'loss of love and affection' to a minor child is also meagre and the same is enhanced to Rs.40,000/- (Rupees Forty Thousand only) and compensation awarded under the head of Funeral expenses is also enhanced to Rs.15,000/- (Rupees Fifteen Thousand only). Further, the Tribunal had erred in not awarding compensation towards loss of



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estate. Hence, this Court is inclined to award a sum of Rs.15,000/- (Rupees Fifteen Thousand only) under the head 'Loss of estate'. In fine, the claimant is entitled to the following compensation:

S.No.	Head	Amount
1.	Loss of dependency	Rs.10,75,200/-
2.	Loss of Love and Affection	Rs. 40,000/-
3.	Funeral Expenses	Rs. 15,000/-
4.	Loss of estate	Rs. 15,000/-
	Total	Rs.11,45,200/-

11.In the result, the compensation awarded by the Tribunal is enhanced and the Civil Miscellaneous Petition is allowed.

12.The Insurance Company is directed to deposit the entire compensation as modified by this Court with interest and costs, excluding the period of delay, to the credit of M.C.O.P.No.895 of 2010, on the file of the Motor Accident Claims Tribunal / III Additional District and Sessions Court, Tirunelveli within a period of one month from the date of receipt of copy of this judgment, less the amount, if any already deposited. The Tribunal shall deposit the entire compensation in a Fixed Deposit in any one of the Nationalized Banks, till the minor claimant attains



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majority. The guardian of the minor is permitted to withdraw the interest accrued thereon once in three months directly from the bank. 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/
III Additional District and Sessions Court, Tirunelveli.
- 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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