



C.M.A(MD)No.283 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.283 of 2021

1.Thiyagarajan

2.Sujatha

3.Minor Ajay

4.Minor Aarthi

5.Minor Sanjay

6.Minor Suvetha

7.Samuthram

... Appellants

.vs.

1.Annai Therasa Nursery and Primary School,
Ilayur, Udayarpalayam Taluk,
Ariyalur District.
Represented by its Correspondents having office at
Malahan Street, Ilayur Post,
Udayarpalayam Taluk,
Ariyalur District.

2.Cholamandalam MS General Insurance Co.Ltd.,
represented by its Branch Manager, Trichy,
having its office at Bharathidasan Salai,
Contonment, Trichy

... Respondents



C.M.A(MD)No.283 of 2021

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, to set aside the judgment and decree dated 23.07.2019 made in MCOP.No.274 of 2017 on the file of the Motor Accident Tribunal/Principal Sub Judge, Kumbakonam and enhance the award amount.

For Appellants :Mr.A.S.Mathialagan

For R1 :No appearance

For R2 :M/s.K.R.Shivasankari

JUDGMENT

This appeal is filed seeking enhancement of the compensation awarded in MCOP.No.274 of 2017 on the file of the Motor Accident Claims Tribunal/Principal Sub Judge, Kumbakonam, claiming compensation of Rs.50,00,000/- for the death of one Vijay.

2.The case of the appellants is that the appellants 1 and 2 are the parents of the deceased and the appellants 3 to 6 are his siblings. 7th appellant is his grandmother. On 07.10.2017 at about 04.00 pm., the deceased was riding TVS 50 vehicle bearing Reg.No.TN 82 A 9946 in Kumbakonam-Chennai main road from south-north direction. At that



C.M.A(MD)No.283 of 2021

time, the vehicle bearing Reg.No.TN 61 C 5952 owned by the first respondent was driven by its driver in a rash and negligent manner and hit the two wheeler from behind. As a result, the deceased Vijay sustained head injuries and other injuries. He was admitted at Medical College Hospital at Thanjavur. Despite treatment, he died because of the injuries on 08.10.2017. The deceased was a BBA Graduate and was earning Rs.20,000/- per month as Manager in a Hotel. He contributed his income to the welfare of the family. Due to his death, the appellants had lost his monetary and moral support. In the said circumstances, the claim petition was filed claiming compensation of Rs.50,00,000/-.

3.The second respondent filed the counter affidavit stating that the deceased was not having valid driving licence at the time of the accident. The vehicle driven by him had no valid insurance policy. The claim that the deceased was working as hotel manager and was earning Rs.20,000/- per month is not correct.

4.On the basis of the oral and documentary evidence produced, the learned Tribunal had awarded the following sums as compensation:-



C.M.A(MD)No.283 of 2021

S.No	Head	Award amount
1	Loss of Dependency	Rs.15,12,000/-
2	Funeral Expenses	Rs.15,000/-
3	Loss of Estate	Rs.15,000/-
4	Transport Expenses	Rs.10,000/-
	Total	Rs.15,12,000/-

*Less 10% for contributory negligence
committed by the deceased*

- Rs.1,55,200/-

- Rs.13,96,800/-”

5.It is the submission of the learned counsel appearing for the appellants that the deceased was a bright student and passed BBA in first class. His educational certificates including the mark sheets had been produced in support of this. For such bright student, fixing the notional income of Rs.10,000/- by the Tribunal is very low. The learned Tribunal ought to have fixed not less than Rs.20,000/- as monthly income of the deceased for computing loss of dependency. In support of his submission, the learned counsel appearing for the appellants produced the judgment of this Court in ***Managing Director, Tamil Nadu State Transport Corporation (VPM) Ltd., Vs. R.Natarajan*** reported in **2023 (1) TN MAC 191 (DB)**.



C.M.A(MD)No.283 of 2021

6.It is his further submission that the Tribunal had failed to award any compensation under the head of consortium. All the claimants are entitled for compensation under the head of consortium. His further submission is that the Tribunal had deducted 10% for the contributory negligence on the part of the deceased for having ridden the two wheeler without valid driving licence. This, according to the learned counsel for the appellants, is not correct. There is no evidence to show that the victim contributed to the accident. Even when the offending vehicle's driver had no licence, the insurance company is liable to pay the compensation and then, recover it from the owner. When that be the position, fixing contributory negligence and deducting 10%, for not possessing the driving licence, is not correct.

7.In response to this submissions, the learned counsel for the second respondent submitted that the appellants have not produced any document to show that the deceased earned Rs.20,000/- per month. In the absence of any documents to show the monthly income, fixing the notional income of Rs.10,000/- per month is just and appropriate. The Insurance Company had taken a specific plea that the deceased had no driving licence. If the deceased had any driving licence, the appellants



C.M.A(MD)No.283 of 2021

have to produce the same. Having not done, it is not open to challenge the deduction made at 10% for not possessing the driving licence and contributing to the accident by riding the two wheeler in a public road. Loss of consortium can only be awarded to the parents and not to the minor siblings. In the legal heir certificate, only the parents are shown as legal heirs and not the minor siblings.

8.Considered the rival submissions and perused the records.

9.It is seen from the averments that the vehicle bearing Reg.No. TN 61 C 5952 had violated the permit conditions and therefore, the learned Tribunal directed the second respondent to pay the compensation to the appellants on behalf of the first respondent and then, recover it from the first respondent. There is no appeal filed by the second respondent against this finding. The question that has to be considered in this appeal is whether the quantum of compensation awarded is just and appropriate.

10.Perusal of the order of the learned Tribunal shows that the deceased was 21 years and his monthly income was fixed notionally at



C.M.A(MD)No.283 of 2021

Rs.10,000/- per month. Along with this amount, 40% was added towards future prospectus and the monthly income was arrived at Rs.14,000/- and loss of dependency was calculated. It is true that in the judgment relied on by the learned counsel for the appellants in **2023 (1) TN MAC 191 (DB)**, in the appeal filed by the Insurance Company challenging the quantum of award, the Division Bench of this Court found that fixing Rs. 15,000/- per month as income for the student in the facts and circumstances of the case was just and appropriate.

11.The learned counsel appearing for the first respondent relying on the judgment in *Andal and others vs. Avinav Kannan and others* reported in **2019 (1) TN MAC 54(DB)**, submitted that the claim of compensation at Rs.15,000/- per month without producing any income certificate is excessive. This Court on going through both the judgments finds that the judgment reported in **2019 (1) TN MAC 54(DB)** had followed the scientific method for arriving at the monthly income of the deceased. Therefore, relying on the judgment of this Court reported in **2019 (1) TN MAC 54(DB)**, the monthly income of the deceased is fixed as follows:-



C.M.A(MD)No.283 of 2021

*“Rs.6,500/- x cost of inflation index for the year
2017-2018 ie., Rs.272/- / cost of inflation index for the year
2007-2008 ie., Rs.129/- = Rs.13,705/-”*

12. Therefore, the notional monthly income of the deceased after applying inflation index will be $\text{Rs.}6500 \times 272 / 129 = \text{Rs.}13,705/-$. With this amount, 40% of this amount should be added towards future prospectus. 40% of this amount comes to $\text{Rs.}5,482/-$. Thus, the monthly income of the deceased is fixed at $\text{Rs.}19,187/-$. Thus, the annual income of the deceased is fixed at $\text{Rs.}2,30,244/-$. The deceased is a bachelor. Therefore, 50% of this amount should be deducted towards personal expenses of the deceased. Then, annual comes to $\text{Rs.}1,15,122/-$. Proper multiplier for computing the loss of income is 18. Thus, the total loss of dependency comes to $\text{Rs.}20,72,196/-$.

13. Admittedly, the learned Tribunal has not awarded any compensation under the head - loss of consortium. Therefore, this Court awards $\text{Rs.}40,000/-$ each towards parental consortium to the appellants 1 and 2, and $\text{Rs.}10,000/-$ each to the appellants 3 to 6, towards filial consortium and $\text{Rs.}10,000/-$ to the 7th appellant / grandmother.



C.M.A(MD)No.283 of 2021

14. With regard to deduction of 10% towards contributory negligence, it is the primary duty of the appellants to show that the deceased had valid driving licence at the time of the accident. Having failed to establish this, this Court is of the view that there is no way that the appellants can agitate the deduction of 10% towards contributory negligence by riding the two wheeler without licence in a public road. Therefore, this Court is not inclined to interfere with the same. The amounts awarded by the Tribunal under the other heads are confirmed.

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is modified as follows:-

S.No.	Head	Awarded by the Tribunal	Awarded by this Court	Difference
1	Loss of Dependency	Rs.15,12,000/-	Rs.20,72,196/-	Rs.5,60,196/-
2	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	-
3	Loss of Estate	Rs.15,000/-	Rs.15,000/-	-
4	Transport Expenses	Rs.10,000/-	Rs.10,000/-	-
5	Loss of Consortium	-	Rs.1,30,000/-	Rs.1,30,000/-
	Total	Rs.15,52,000/-	Rs.22,42,196/-	Rs.6,90,196/-
	Less 10% for contributory negligence	Rs.1,55,200/-	Rs.2,24,220/-	
	Final Compensation	Rs.13,96,800/-	Rs.20,17,976/-	



C.M.A(MD)No.283 of 2021

16.Of this compensation amount, the appellants 3 to 7 are entitled for Rs.10,000/- each. The appellants 1 & 2 / parents are entitled for the remaining compensation amount of Rs.19,67,976/-, in equal share, ie., 50% each. The second respondent / Insurance Company is directed to deposit the entire compensation amount, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellants shall withdraw their respective share by filing necessary application before the Tribunal. The order of the Tribunal as regards interest as well as pay and recovery remains unaltered. No costs.

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

20.11.2023

mm

To

The Principal Subordinate Judge,
Kumbakonam.



WEB COPY



C.M.A(MD)No.283 of 2021

G.CHANDRASEKHARAN,J.

mm

C.M.A(MD)No.283 of 2021

20.11.2023